



Increased exchange in the Building Sector

Building Legislation in Balticum and Poland

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Preface

This report is comparing the building legislation in the three Baltic countries and Poland. The report has a focus on the “intensions” of the legislation, and the sets of tools chosen by the countries to fulfil these intensions. The report is not making any evaluation of the legislations – just a comparison.

The building legislation is operating within frames – given by the planning hierarchy, the historical and present context regarding market and actors, and by other legislation in each country. To understand the legislation itself and the similarities and differences between the countries, the first part of the report comprises this context in each country. The second part of the report is a comparison of the main topics in the legislation, while the last part is dealing with implementation of the laws.

The report is funded by the Nordic Council of Ministers, as a project within the program for “Increased Exchange in the Building and Construction Sector in the Northern Dimension region”. The main purpose of the report is to be helpful for the governments in their efforts to develop the legislation and to obtain goals supporting the program. The report has been approved by the Steering Group for the program in December, 2007.

The background information for the report is mainly the legislation text, booklets and other written information from the ministries and/or governments in each country, and information given in group interviews with central public officers in the ministries/governments. The contact persons have been very helpful both in the early stages of the project, and in the last stages. Finally contacts in Latvia and Lithuania have contributed with corrections to the report while there have been no objections to the content of the report from Poland and Estonia.

We will therefore send our thanks to all contact persons and contributors from the four countries, for their valuable participation in interesting discussions and for skilled guidance into the written information from each country. We will also send a special thank to lawyer/senior adviser Frode Grindahl in the Norwegian Ministry of Local Government and Regional Development for his participation and contribution in the project.

The report is written by the researcher, M. Architect Sidsel Jerkø at the Norwegian research institute SINTEF Building and Infrastructure.

Again – Thank you very much, to all contributors!

Oslo, January 2008

SINTEF Building and Infrastructure

Summary

Introduction

The goal for this report is to describe the main principles of the building legislation of the three Baltic countries and Poland, and to compare some of the central issues. In each country the legislation is based on a historic situation, and the challenges may have been different – thus the legislation also may differ. This report has an intension of seeing the legislation as complete systems in each country – not primarily as ‘a comparing of chapters’.

This report is given mandate from the Nordic Council of Ministers, and is meant to help in a political and administrative process of improving the harmonization of the building legislation between the countries in the Baltic Sea Region. The content of the report is primarily based on interviews with persons in central positions in the ministries and departments in the countries, the actual legislation text, and booklets/other written information from the authorities.

The report has three main sections: a) Background and “frames” for building activity in each country, b) Comparison of the principals for the building legislation in each country, and c) Implementation.

The report has focus strictly on the building legislation, but for some aspects it is necessary to enlighten the ‘frames’ for the building activity, the history/background or the practice connected to special issues.

Comparison of the context for the building legislation

The three Baltic countries have many similarities. They are three neighbouring, democratic parliamentary republics with similar sizes and rather similar history for the last century, they all declared independence from the Soviet Union 1991, and they all got their membership in EU in 2004. But the countries also differ on important basic parameters. They have different religions, different homogeneity of the population – and they do not understand the language of each other. This means that they have important differences in some cultural aspects. Poland, however, is a country more than ten times as big regarding population, and with a history that differs from the others on central parts.

The number of levels of administration follows the size of the population: Estonia and Latvia have two formal levels of administration, Lithuania has three levels of administration, and Poland has four levels of

administration. But in some countries, some of these levels are again divided on two levels.

All the four countries have rather strong state economy, but low wages compared to “old” EU-countries. The three Baltic countries have low unemployment, while Poland has high unemployment. But the countries experience that skilled workers emigrate to “old” EU-countries – from the Baltic countries mainly for personal economy reasons and from Poland because of the unemployment.

In spite of the obvious similarities in the recent history of the countries, the long historical perspective shows that the histories of the countries in fact are very different. This has had impact on the mental attitude to both the transition period after the independence from the former Soviet Union, and on their ideological approach when they should form a new building legislation, and there is a strong connection between the history of the country and their approach to form the new building legislation.

- Estonia has had a strong Scandinavian influence through history, and has used “models” mainly from Finland and Germany when they formed a totally new building legislation.
- Latvia has been dominated by occupations from neighbouring countries, and has strong influences first from Germany (because of Riga as a Hansa League city), and later from Russia/Soviet. Their building legislation is based on the former Soviet legislation, but gradually transformed – mostly by expert advice.
- Lithuania has had a strong influence from Poland and Central-European countries, and has also had a history as a “superpower” in Europe, from the long period in union with Poland. They now have a new building legislation based on adapting and adjusting directly to EU-legislation.
- Poland has had a turbulent history, having been both one of the strongest powers in Europe (in union with Lithuania), and almost wiped out of the map. And they still have some internal political turbulence. The current building legislation is based on former legislation without major changes, but with several small adjustments; the legislation may now seem a bit like a “patchwork”.

Administration of the building legislation

The three Baltic countries all have planning and building legislation divided in two separate laws, while Poland has a joint law. But there are differences in the administrative responsibilities:

- Estonia and Latvia have similar administration of the legislations, with “Ministries of internal affairs” as the formal administrators of

the planning legislation, and Ministries of Economics as the formal administrators of the building legislation.

- Lithuania and Poland have both the same ministry as administrators of planning and building legislation – even if it is not the same ministry in the two countries; Ministry of Environment in Lithuania, and Ministry of Transport and Construction in Poland. In both countries the planning legislation is administrated by a Planning Department, while the building legislation in both countries is administrated by departments with direct responsibility for the construction industry.

The planning hierarchy as context for building activity

The levels of authorities and the levels of plans in the planning hierarchy are closely related, but not identical. In addition, it may be difficult to define the levels of the authorities, as the “county level” may be considered as a delegated part of the state level in some of the countries, while others look upon the “county level” as a coordinator of a group of municipalities.

The main principles are the same in all the countries: on national level, the plans are strategic and give guidelines and directives, while the most detailed level is giving the instructions for final land use and building conditions, and is legally binding and the formal basis for building activity.

In all the countries, there must be approved “Local plans” as a frame for the building activity, and they shall cover the whole territory of the municipality. Without such plans, there should not be issued building permits – which is necessary to start a construction work. The principle is then that the public opinion rests on the planning process – and a building project shall be in accordance with the approved plan where the democracy is taken care of.

Theoretically, the planning system then provides a clear basis for building activity in all the countries. But in the “real world”, the planning system is young, and the municipalities are small and with limited resources. In all the countries there are municipalities with lack of Local plans – and the amount of this differs between the countries.

In case the Local Plan is *not* worked out or is not approved, there are different procedures in the countries, and the planning system acts differently:

- In Estonia, the Comprehensive plans (the level above Local plans) are given a status as legally binding for building activity in rural areas. In urban areas, a developer in such cases must produce a Local plan himself, and this plan must be handled politically after the same directions for democracy in planning. Or specific design criteria can be given by local government.

- In Latvia, there is a possibility to have Detailed plans (a level below Local plans), which cover a smaller territory than the whole municipality and therefore would be less demanding to work out. These plans may be worked out on the basis of a Local plan where there is need for more detailed conditions for building activity – or if necessary: they may be worked out on the basis of a District plan. Detailed plans are given the same legal status as the Local plan. There is also a possibility to arrange ‘open hearings’ in case of lack of a Local plan.
- In Lithuania, there must be a Local plan – and if this plan is not worked out, a developer will have to do so (and pay for it), and the plan must follow the normal procedures regarding public opinion, democracy and approving process.
- In Poland, the Mayor is in such cases given authority to decide the procedure (or outcome of an application) for an application for building permit. If he does not approve the project, the developer must work out a “Local plan”. But he may also approve directly, and in such cases there is no public hearing for this plot. In these cases, the Mayor also defines a fee for the developer.

The lack of plans is the major challenge in all the countries. Connected to this, the lack of capacity, competence and resources on the municipality level is a part of this challenge.

In all the three Baltic countries – and to a small extent also in Poland – there is an additional obstacle connected to the practice of the planning system. Private ownership is important, but also a young issue to handle in many cases. A developer has to prove the ownership to the construction plot, and this can sometimes be difficult. In any case, the bureaucracy has to use large resources on sorting out the ownership on plots, and this is weakening the capacity for making plans.

Objects for the building legislation

Content and structure of the building acts

The structure of the text of the legislation may seem of little importance, but the accessibility to the legislation depends to some extent on such simple factors. As a subjective comment from a foreigner to all the countries, not being a lawyer, the accessibility of the text appeared differently, and the legislation text in Poland was rather difficult to use.

In general, the building acts cover the same aspects in all four countries, and that is the most important contribution to the similarity in the content. Most of the countries have a main focus on all aspects connected to approval of the building permit. But Poland differs slightly from the

Baltic countries. Poland has greater focus on all aspects of the roles, mandates, duties and rights of the authorities, including specified instructions for handling procedures. Amongst the Baltic countries, Latvia has most similarities with this. The Polish building act also has a separate chapter connected to claims for maintenance.

Objects for the building legislation

In all the countries, all construction works shall be regulated by the building legislation, and the basis for all building activities (including demolition) are building permits – or for small construction works: “written consents” or “notifications”.

Classification of the construction works is not mentioned in the building acts of Latvia and Lithuania. But in Estonia there is mentioned that claims on the construction and on the documentation to follow an application for building permit will differ, depending on the size and complexity of the construction works – and that these condition will be set by the authorities in an early meeting. Latvia provides simplified procedure for starting building activity depending on complexity of construction or renovation works. In Poland, the construction works may be classified in several categories – in an appendix 30 categories are mentioned – and according to the act, the technical claims will differ between those categories.

In all the countries, the technical claims are mainly given as “functional claims”, and there are references to national norms and technical standards, to EU-legislation and EU-standard, and to “best practice”. But in Poland they still have some of the technical claims directly in the building act.

In Estonia, the more detailed instructions for the administrative handling procedures for building permits are also taken out in a separate regulation, the “Administrative Procedure Act”.

In all the countries, there is an obligation to register all buildings and construction works by the authorities, but there may be some minor differences in the way this shall be done.

Actors – Responsibilities and competence claims

Division of responsibility between the authorities and private actors

In principle, the division of responsibilities between authorities and the private parties regarding early stages of construction works are rather similar in the four countries, in following aspects:

- The authorities perform the formal basis for building and the design conditions for a construction site, through a local plan.

- The authorities have the responsibility for democracy processes in planning.
- Democracy processes are not a part of the building legislation for handling procedures to obtain building permits (with some minor exceptions in Latvia and in Poland)
- Clients must follow the guidelines and design criteria given in local plans, and the authorities shall check that so is done.
- A client must prove his ownership to the actual construction plot (at least in Lithuania and Poland)

Technical infrastructure is a responsibility of the local governments in Estonia and in Lithuania, but this is mainly on private actors in Latvia and Poland – even if the authorities shall supervise this.

Responsibilities, competence claims and accreditation systems

The client is the responsible part in a construction works towards the authorities, in all the countries. But there are some minor differences in his responsibilities:

- In general, the superior responsibility of the client is stated directly and clearly in the legislation text – but not in Latvia, even if the client also there has to ensure that the building process is carried out in accordance with all requirements.
- In general, the client has the responsibility to hire actors with relevant and sufficient qualifications – but not in Estonia, where these obligations rest on the actors themselves.
- In general, the client is responsible for design and technical solution (towards the authorities) – but not in Poland, where the client does not account for these factors, and the responsibility for this rests on the actors (designers).
- In Lithuania, the client's responsibility is the most complete, and without exceptions.
- In general, there are qualification claims on all actors. In Lithuania and in Poland, these qualification claims are laid on the heads of the involved companies.
- In general, there are central State Registers to help securing that the competence claims on the actors are fulfilled – but not in Lithuania, where this is voluntary and kept by voluntary trade organizations.

There can be concluded that in Poland, the legislation places the responsibility for the actors' competence on the client, but the authorities still have State Registers and supervise the competence of the actors in each construction works – a kind of double security on this issue. In Latvia, it

is the same situation, but not so clear, since the client's responsibility is not so clearly defined in the act.

In Estonia and Lithuania, the responsibility for the actor's competence is placed only in one place. In Lithuania, this is by the client, and then the authorities do not even keep a central state register. In Estonia, this is not a responsibility of the client, and the authorities then must control this – and they then must have a Central State Register.

Building structures – Building permits and quality systems

Significance of Building permits and Permits for use

Regarding Building permits, there are not any significant differences between the countries – a Building permit is a document of high importance in all the four countries.

The Permit for use – or Completion certificate – has in principle theoretically also the same significance in all the four countries. Mainly, the significances of a Completion certificate represent different aspects of the main purpose of making the building a legal property for use and sale. But there are some differences between the countries in this formal significance. In addition to the main purpose, are mentioned:

- To get the building insured is a purpose in Estonia and Lithuania
- To get electricity and water on a permanent basis is a purpose in Estonia.

But in all the countries (except Latvia) there are moderations in practice, which in reality makes the significance of the Completion Certificate less important. In the countries where this document should be the basis for insurance, the insurance companies insure anyway as long as the client pays. The possibility to use the buildings without the certificate is obviously present. And in Estonia it seems as if there are few economical incitements to complete the construction works and obtain the Completion Certificate.

Quality in built environment

To obtain and secure high quality in the build environment is one of the major purposes of the building legislation in all the countries. Quality also comprises some “less measurable” factors, as accessibility, aesthetics, environmental protection and maintenance.

Estonia and partly Lithuania are not specific in the legislation text on those issues, even if Lithuania expresses an interest for increased focus

on aesthetics. In Estonia, these factors were regarded as a matter of the clients' priorities – and maintenance also a matter of the clients' own economical interest. But in Lithuania, most of these factors are covered by other legislation, and to avoid unclear legislation and responsibilities, they do not want to have the same topic covered several places.

Latvia has given these aspects much attention, and the factors are all handled in separate articles. These articles do not provide concrete descriptions or instructions, but state a general focus and thus give a legal basis for more detailed instructions in other types of documents.

In Poland, accessibility and aesthetics are given the same type of attention as in Latvia. But in addition, there is a separate chapter of maintenance, and this chapter is giving rather detailed instructions both for obligations, frequencies, documentation and inspections connected to maintenance. In addition, Lithuania and Poland has separate chapters for handling catastrophes.

The differences in handling the “soft obligation factors” in the countries may be an expression of views on the responsibilities for these kinds of issues. In Estonia this may be regarded as responsibilities of private actors, in Lithuania these issues are covered by other legislation, while in Latvia and in Poland supervising this is a part of the responsibility of the building authorities.

Control and supervision

The complete systems for control and supervision are distinctively different.

First, the principles of the structure of the distribution of duties must be mentioned, because issuing of building permits are regarded very differently. Latvia and Poland have divided the procedures for building permits and permits for use on two different authorities, while Estonia and Lithuania have these functions at the same office.

This difference in division of duties also affects the structure of the authorities. Some basic information on structures for building supervision authorities, their main duties, and the claims for owner supervision shows that there are several points to be noticed, and here are some of those:

- The functions of the complete system of control and supervision are divided on two different authorities in Latvia and in Poland – and in Poland this is done also for state supervision, and the state division is again divided on two levels.
- In Estonia and Latvia, the local government administrations on municipality levels issue building permits, by the same type of administration but on district level in Poland, and by the local office of the State Building Inspectorate in Lithuania.

- The lowest level of control authorities are issuing permits for use in all the countries.
- In Latvia and in Poland, the construction supervision comprise regular construction site inspections, while this is not the case in Estonia and in Lithuania
- In Estonia and in Lithuania, owner supervision is mandatory, while this is not the case in Latvia and in Poland.
- Control of actors' competence is performed only by three of the countries – not in Lithuania (on regular basis). But in Latvia, this is done by the state level of control, not by local governments.

The “pictures” arising from this, may be that the four countries may be divided in two groups: Estonia and Lithuania on the one side, and Latvia and Poland on the other side.

The first group of countries has placed the “first line of control” on the clients (private actors) while the other group has the “first line of control” formally placed by the lowest level of control authorities. In both Latvia and Poland this lowest level of control authorities is on a level above the municipality level (in Latvia, the local inspectorates cover more than one municipality, and in Poland this authority rests by the district level).

The “first line of control” comprises construction site controls, and these functions are performed in institutionalized form by the authorities in Latvia/Poland, but only as a possibility for supervision by the authorities in Estonia/Lithuania – where owner supervision performs this and file a log. Construction site controls are demanding many resources in Latvia/Poland.

The division of the handling procedures for building permits and for permits for use follows the same division line: in Latvia/Poland there is division between the handling of building permits and permits for use – while these handling procedures are placed in the same authority in Estonia/Lithuania. However, there are also differences not following this “division line”: In Estonia, Latvia and Poland issuing of building permits are handled by local governments, while in Lithuania the control inspectorate performs it.

But in the “picture”, it may seem as if the division of the authorities expresses two different attitudes regarding building permits. In Latvia/Poland, issuing of building permits may be regarded more or less as a prolonging of the planning processes because of the close connection between the Local plans and the building permits – the main purpose of a building permit may then be considered to be securing of compliance between the conditions given in the plans and the design of the construction works, and thus be handled by authorities closer to the planning offices. In Estonia/Lithuania, both procedures may be looked upon as just two aspects of a building process, and both aspect deals with documentation control: The first procedure deals with compliance between the con-

ditions given by the Local plan and the building project documentation, and the next procedure deals with compliance between these documents and the as-built-documentation.

In Latvia/Poland, the legislation has a wider focus on the control authorities than in the two others. In both these countries, the legislation has specific instructions, describing their mandates, their duties and their handling procedures and possibilities for ordering prescripts. The legislation also describes the organization of the control authorities on different administrative levels rather detailed. These issues are also mentioned in the legislation in Estonia/Lithuania, but to a distinctively more moderate degree.

Complaints, irregularities and sanctions

Complaints and public interests

Public interests are, in all the countries, mainly taken care of by the planning processes. Connected to the handling of applications for building permits, the public interests is not an ordinary part of the handling procedures, and therefore publishing of applications or warning of neighbours are not necessary – except in Latvia. But there are some exceptions from this:

- In Estonia, the information contained in a building permit must be published by the authorities on the web site of the state register of construction works, after approval.
- In Latvia, the authorities must announce the applications and warn the neighbours as a part of the handling procedures of an application for a building permit. And in cases of applications “of great significance or public importance”, the authorities must organize a public hearing on the project before approval of the project.
- In Lithuania, the client must inform the public when he starts a design process.
- In Poland, the local governments in each case shall verify the needs for public opinions, and decide the procedures for obtaining this.

The possibilities to express a public opinion after a Local plan is approved, through handling processes connected to an application for a building permit, are then in fact present in all the countries except in Estonia, even if the main principle is that democracy is taken care of in the planning process.

Complaints most often are forwarded because neighbours are not aware of a coming construction work, and disagree on the project when they see it. But hey may also be a “warning” of illegal building activity. But just

very seldom and occasional, the complaints are forwarded because of aesthetic matters (the only possible exceptions may be in Latvia).

Handling of complaints may differ between the countries:

- In Estonia, complaints are handled by the local authorities – the same authority as the one to issue the building permits. And the next step is to go to court.
- In Latvia, the local authorities also are the first step for a complaint – but then there are two possible procedures: whether firstly it may be submitted to the Local municipality or it may be submitted to the State building Inspectorate.
- In Lithuania, complaints will be handled by the first step of the Building Inspectorates, and will only be forwarded to the State level in case of difficult or complicated cases.
- In Poland, complaints will be handled by the Province level of the Architectural-building administration, and the next step will be the court. Complaints on the content of a building permit will be dismissed.

In principle, Estonia and Lithuania have similar solutions, where complaints are handled by the first level of authorities, if possible. In Latvia and Poland the complaints in reality are handled by the next level of authorities (the first step in Latvia primarily forwards the complaints).

In all the countries, complaints on the content of a building permit will be dismissed.

Irregularities and sanctions

Irregularities and illegal building activity occur in all the four countries – as in all other countries – and that is why the building legislation comprises articles on sanctions. But the pattern of the major challenges of this illegal building activity differs between the countries:

- In Estonia, illegal building activity primarily is performed by self-builders of own dwellings in rural areas, with little knowledge of formal procedures.
- In Latvia, illegal building activity primarily is connected to the restricted coastal zone, where rich people (often foreigners) build without building permits in this attractive area – and often also claim (with and without reason) that they have a verbal approval from the local authorities, which make penalty reactions difficult.
- In Lithuania, illegal building activity also primarily is connected to the restricted coastal zone, performed by rich people. But here is another challenge, because building activity in this zone (against the

directives from central authorities) are being made legal, both by legal impact of old approvals, and by “postponed approvals” when illegal building activity already is completed.

- In Poland, illegal building activity primarily is a challenge in urban areas. Because of lack of both dwellings and of approved Local plans in urban areas, developers may calculate on “postponed permissions” and start building without any formal procedures – and the strategy often works.

In all the countries, the legislation gives the authorities the possibility to order demolishing of illegally built construction works. But in all the countries, this is a very seldom used reaction; altogether there was only one known example of this (in Lithuania).

In all the countries, the common sanctions are penalty fees – of different amounts.

Penalty fees may have some effect in Estonia, but in the three other countries, the major parts of the illegal building activities are performed by clients who have enough money to pay the penalty fees without much effort and even calculate these fees into the project costs.

In addition, we see that in all the countries, illegal building activities also have connections to the practice of the local governments. As long as there are often used possibilities to either have the projects ‘postponed approved’ (and pay a “little” fee), made legal in other ways, or not being persecuted at all, the possible sanctions given by the building legislation will be of minor interest.

Handling procedures

In all the countries there are simplified procedures for small projects. These small construction works are normally defined in the legislation (but in different ways), and they will only need a Notification (or written consent) – not a complete application for building permit.

Estonia and Poland have procedures where the client has to ask or apply for design criteria in some cases. In Estonia, this is the case if detailed plans are not mandatory; in Poland, this is the case if there is no approved plan for the construction site.

In addition: In Poland, complex construction works may lead to a demand for a developers’ plan.

Applications and handling procedures for building permits

Some of the pre-procedures are mentioned. In addition, client must prove ownership to the construction site in Lithuania and in Poland.

An early meeting between client and authorities by start of the design process is possible in all the countries – but with different status. In Lithuania this is mandatory, in Estonia this is voluntary, in Latvia this must be done in certain complex building cases, and in Poland this is just an option.

Mainly, claims for the application documents and the evaluation of the applications for a building permit do not differ much between the countries – but there are some minor differences. They will all need to have design documentation in compliance with the conditions given in plans or by local governments, and they will all have to prove the qualifications on the actors with qualification claims.

But in Estonia and in Lithuania, there must be appointed an owner supervisor – this is also mentioned in some instructions for handling procedures in Poland, but not in the legislation text. And in Estonia and in Latvia the building companies involved must be listed in a Merchant Register.

The client does not have to warn the neighbours in early stages in any of the countries, but in Latvia this will be done by the authorities – and in Estonia the results of an application will be announced on the website of the authorities after issuing of the building permit.

In the construction period, the authorities perform construction site inspections regularly in Latvia and in Poland, by some defined stages in Estonia, and just as supervision in Lithuania.

Completion certificates (claims and procedures)

The handling procedures for issuing of completion certificates are rather similar in the countries: The client will have to apply, send in as-built-documentation and documentation on the quality of the completed construction work. It seems as if this final inspection with documentation is performed by the authorities in all the countries.

Other aspects

In all the countries, there are given time limits for the authorities on each stage in the handling procedures. In Estonia, they have confirmed that applications can be sent electronically, but we do not have information on this from the other countries.

Insurance and guarantee

In Latvia and in Lithuania, both insurance and guarantee grants are mandatory, while only guarantee grants are mandatory in Estonia. In Estonia and Latvia the guarantee period is 2 years, and in Lithuania the period is five years. In Poland, such obligations are not mentioned in the legislation.

1. Introduction

1.1 Goals for the report

The goal for this report is to describe the main principles of the building legislation of the three Baltic countries and Poland, and to compare some of the central issues.

In each country the legislation is based on a historic situation, and the challenges may have been different – thus the legislation also may differ. The building legislation and the building activity may also have different “frames” in each country, depending on planning systems, political situation, position of private actors and other factors. For this report there is also an intension of seeing the legislation as complete systems in each country – not primarily as “a comparing of chapters”.

This report is given mandate from the Nordic Council of Ministers, and is meant to help in a political and administrative process of improving the harmonization of the building legislation between the countries in the Baltic Sea Region. The report therefore has less focus on the handling procedures for building permits, as a tool for entrepreneurs.

1.2 Content of the report

1.2.1 The structure of the report

The content of the report is primarily based on interviews with persons in central positions in the ministries and departments in the counties. In addition the contact persons have handed over several notes and background information on both planning systems and building legislation, as well as the Planning and Building Acts translated to English.

The report has three main sections.

A. Background and “frames” for building activity in each country

In this section the framework for the building legislation in each country is described – a short history of the country and the legislation, the structure and levels of the authorities in the country, the planning hierarchy and the formal status of the different planning levels – and how this planning systems works as a frame for building activity in the country.

B. Comparison of the principals for the building legislation

In this section central principles are described and compared: the different actors and their responsibilities according to the legislation, competence claims on the actors and accreditation systems to supervise this, and the systems for obtaining high quality in the built environment. This section also deals with systems for control and supervision, complaints and public opinion, and irregularities and sanctions if so should occur.

C. Implementation

This section is dealing with the handling procedures including application for building permits and the significance of the building permit and the completion certificates, time limits for handling procedures, documentation claims on the projects. Claims for insurance are also mentioned.

The text is mainly based on facts or information given by the contact persons in the project, except for the text in chapters for “comparison”, where there also is an analysis of the issue by the author.

1.2.2 *Limitations of the content*

The building legislation operates in a “landscape” where lots of factors have impact on the building activity – not only the legislation itself, see fig.1.

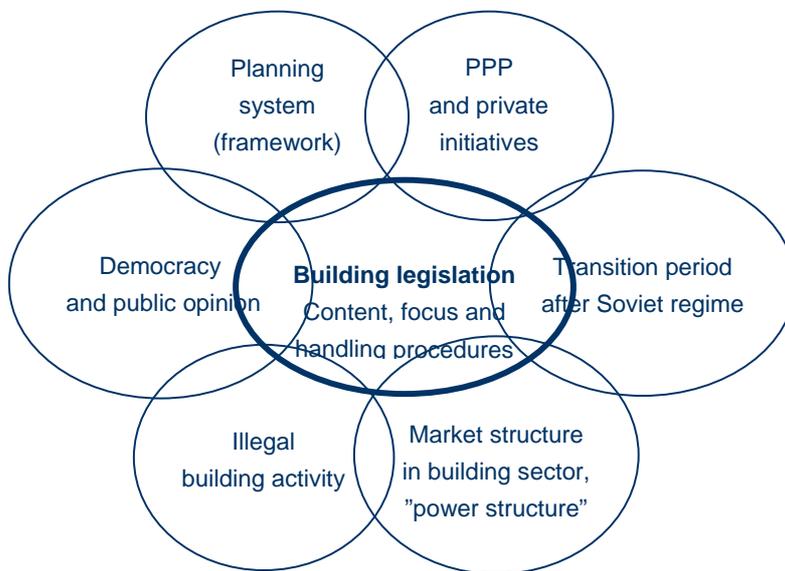


Fig. 1: Building legislation and some other factors with impact on the building activity

Some comments on these factors, related to the content of this report.

Planning system – framework

The planning system is the main factor for giving frames for building legislation and building activity. Theoretically all building activity in all the countries should be based on approved spatial plans – both on a superior level and on a local (and more detailed) level.

The planning legislation and the building legislation are strongly connected, and most often they are two parts of the same Planning and Building Act. In principal, the planning legislation gives the directions for the spatial use of land – how, what and where – while the building legislation gives the directions for approving building projects and the building activity, including quality of the built environment. Planning legislation therefore is very important for the building legislation. However, there are differences between the countries, and the planning systems are shortly included in the report, but primarily as frames for the building legislation, in the first section of the report.

- *Democracy and public opinion*

Democracy and public opinion concerning building activities differs slightly between the countries, and for the building legislation this is mentioned in the chapter “complaints and public interests”. But in many cases, the public opinion concerning building opinions primarily should be handled as a part of the planning process – and then there should be no need for public hearings or public display of building projects. The democratic processes in planning will not be handled in this report.

But the democratic processes connected to approvals for a building project or to complaints on a building project will be handled, as mentioned above.

- *PPP (Public Private Partnership), private initiatives and negotiation planning & building*

In most of the Western European countries there are ongoing processes where “negotiation planning and building” are more and more common. This type of planning makes a challenge both to the planning systems, to the regulated democratic processes connected to the planning process, and to the handling procedures for approval of the projects.

In the report there will be a brief summary of the situation for each country, in the first section. We do not have thorough knowledge of the situation, and this type of planning and building activity is not specially mentioned in the legislation – this is a part of the practical implementation. This issue is therefore not a focus in the report, but in some of the countries this is an important part of the early stages of building projects, and the related challenges are increasing, and the issue must be mentioned.

Transition period after Soviet regime

The three Baltic countries and Poland have all been a part of or closely connected to the earlier Soviet Republic (USSR), but are now independent countries. The building legislation under the Soviet period was identical for the three Baltic countries (as a part of Soviet). But after the fall of Soviet regime, there has been a transition period where the countries should establish their own legislation. Both the history of the countries and the liberation processes has been different in the countries – and as a consequence so has the building legislations. Because of this impact on the building legislation, a short glimpse of the history of each country will be included – but only as background information.

Market structure in building sector, 'power structure' and financing of building activity

The “marked structure” for the building sector, and the structure regarding public and private clients, entrepreneurs and contractors, financial structures, balance between political and administrative power have a major influence on the building activity. Public subsidies of housing, public buildings and clients as well as political strategies for taxes and wages will also have impact on the building activity.

These issues will have interest for politicians designing a building sector policy, but they are not a part of the building legislation. These issues will require a different approach to the task, and even if the issue could be of interest also for designing building legislation, this report will not touch the issue.

Illegal building activity, challenges and sanctions

Illegal building activity occurs in all countries, including these four countries. Here the challenges might be a bit more serious than in other countries – especially illegal building activity in the coastal area, where the countries after the Soviet period had a great historical opportunity to preserve a beautiful coastline as a common public resort area. This type of illegal building activity is relating both to the planning legislation (because the building activity most often is not according to the spatial planning) and to the building legislation (because the projects do not have a building permit). But the challenge is also more complex than this.

The report will look at this challenge in perspective of the building legislation, and then focus on the possibilities for sanctions – and also

touch the practice of using (or not using) the sanction tools in the building legislation. But other aspects of the approach to the problem will not be discussed.

1.2.3 As a summary

The report will focus strictly on the building legislation, but where it is necessary to enlighten the frames for the building activity, the history/background or some aspects of the practice connected to this, to point out special issues in the building legislation, explanations will be attempted – but in short terms.

A. Background and frames for building activity in each country

2. Estonia

2.1 General information

2.1.1 Population

Estonia has nearly 1.4 million inhabitants:

- Statistics show that the urban population is ca. 69%, and the rural population ca. 31%.
- Ca. 70% of the population speaks Estonian (a Finno-Ugric language) and almost 30% is Russian-speaking. In addition there are several small minorities; earlier a major part of these minorities was Swedish.
- The religion is mainly Lutheran (but rather secularized). There is a minority of ca. 14% Russian-orthodox.

2.1.2 Constitution

Estonia is a democratic parliamentary republic. The people exercise the supreme power, through electing the Parliament (“Riigikogu”) and by participating in referendums. Executive power rests with the Government. The head of State is the President of the Republic.

The country has been a member of both EU and NATO since 2004.

2.1.3 Administrative divisions

Estonia has 2 levels of authorities: state (including counties), and local government (municipalities).

The State level is divided in central government, and in 15 County governments (which are parts of the state institution).

The counties are divided in several town municipalities (“Linn”), and rural municipalities (“Vald”).

There are 241 local governments (municipalities); 39 towns and 202 rural municipalities. A town municipality covers only areas of urban settlement, and towns and rural municipalities have the same rights and responsibilities. The towns have from 400,000 (Tallinn) to normally 10–20,000 inhabitants and the rural municipalities have an average size of 1,500–2,000 inhabitants.

2.1.4 Administration of the building legislation

The Planning Act and the Building Act are two separate laws, and the administration responsibility of the laws is separated on two ministries. The Planning Act is administrated by the Ministry of Internal Affairs, while the Building Act is administrated by the Ministry of Economic Affairs.

2.1.5 General state of economy

The economy is one of the strongest of the new EU-members. The economy is quickly growing (partly encouraged by Scandinavian companies' involvement), but the growth has been mainly based on internal demand and low interest rate. The economy is based on oil transit, a strong IT-sector, wood & paper. The country has low unemployment.

2.2 History/development of the building legislation

2.2.1 Short glimpses through the history of Estonia

The history of Estonia displays a strong Scandinavian influence since ancient times.

Originally the population was Finno-Ugric tribes, but they were conquered by the Danes in 1227 and ruled by Denmark until 1346, when Germany took over and ruled the country until 1561. After that, Estonia was a part of Sweden for a long period – 1561–1710 – even if there were two combats with Russian forces and the southern part for a period was ruled by Poland-Lithuania.

Sweden lost the Great Nordic War, and Estonia was then to be ruled by Russia. But after the Russian revolution, Estonia in 1918 declared themselves an independent country – and this independence lasted to 1940, when Soviet Union occupied the country. Under the World War II Germany occupied the country 1941–1944, but then Soviet Union regained power.

Estonia declared independence from Soviet in 1991, and has since then been a democratic republic.

This brief passage shows that Estonia most of the time has been ruled by others through history, and their two independent periods have been rather short. 'The golden age' of Estonia is held to be the Swedish period, and therefore the Scandinavian influence is still strong – even if the Russian influence also can be noticed.

Under the Soviet period, the country was forced into collectivization of the agriculture and to an (inefficient) industrialization, combined with occupancy of large areas for restricted military purposes. The Soviet period was looked upon as a rough period.

Both the early Scandinavian influence and an access to Finnish television during the Soviet period made Estonia one of the earlier Soviet republics with strongest influence from western culture.

The liberation from Soviet was primarily economically motivated.

2.2.2 Development of building legislation

The first Building Act is dated 1939, but did not function more than two years before Estonia was occupied by the Soviet Union. During the Soviet period there was no regulating planning, no authorized local governments, and there were just centralized planning for official administrative use or classified. After Estonia regained independence in 1991, a new Planning and Building Act came into force in 1995 – followed by a separate Planning Act that came into force in 2003. These laws were entirely new, they did not “inherit” content from the Soviet period.

The Planning and Building Act (PBA) of 1995 was administrated by the Ministry of Environment/Department of Regional Affairs. As the PBA of 1995 was worked out by the new regime after the ending of the Soviet period, the major challenges were connected to handling private ownership in the planning and building process. The private ownership represented a change, both regarding planning processes, preservation of the houses and building activity.

For the new legislation, they used models mainly from Finland and Germany.

The Planning Act (PA) of 2003 was a consequence of new division of the ministries (which took place in 2000), and lead to a division of the PBA. The main challenge in the work with PA of 2003 was better systems for public participation in the planning process. The Building Act did not have major changes in 2003, but new governmental administration.

2.3 Hierarchy of Planning systems and Authorities

2.3.1 The types of plans and levels of administration

State level

In the planning field, responsibility on the national level lies with the Ministry of the Interior, whose task is overall regulation, co-ordination and supervision of planning and building as well as preparation of national spatial plan.

- National plan is called a spatial plan, but is not a land use plan (as you could expect). It is a policy document describing general principles, needs and general guidelines for spatial development. It covers the whole country, is worked out by the Ministry of the Interior on behalf

of the Government, who initiates the plan when needed, and define the relevant task. The Ministry of the Interior is held responsible for the preparation itself.

The plan is not subject of public display nor public discussion, but according to the Act, there is obligatory institutional co-operation, both with other state sectors and with county governments and county associations of local governments (municipalities). There is a requirement, though, to review the basic principles of a national plan for the public in national or county newspapers.

National spatial plan must have concert of the relevant ministries and with the county governments and county associations of local governments. The plan is then adopted by the Government.

The National spatial plan is an outline for the physical development of the entire territory of the country. The objectives of the national planning policy statement are to define the principles of and directions in sustainable and balanced spatial development, give directions for development of superior technical infrastructure and settlement systems, and secure areas of special interest for preservation.

County level

County government is a state institution, but to a certain extent, development and planning activities on the county level are influenced by county associations of local governments. County government is responsible for preparation of county plans, supervision of the planning activities of local governments, and should participate together with other authorities in the preparation of national planning guidelines.

- County plans are covering either a whole territory of a county or a part thereof, or several counties. The plans shall define directions for spatial development and co-ordinate state interests and regional interests in the county/region, by making specific guidelines for spatial development, and these shall follow the directions given by the National plan. County plans may also be prepared as thematic plans with the objectives specified below.

The plans shall be approved by the Minister of the Interior, and they are binding for the comprehensive plans. County plan must also have concert of the county governments neighbouring the planning area and the local governments of the planning area. A county plan approved by the Minister of the Interior is adopted by the County Governor.

The law does not constitute the obligation of county plan production. The need to produce a county plan is identified and the relevant task is given by the Government or the County Governor. County Government is held responsible for the preparation of the plan.

The plans must be produced in co-operation with the local governments of the planning area, neighbouring county governments and ministries concerned. County plans are displayed for four weeks in county centers and other towns and municipality centers of the planning area.

The main objectives of county planning are to define the principles for and directions in the spatial development of the county, where state and local needs and interests are balanced with regard to spatial development, define general provisions for the use of land, water areas and mineral resources, designate the main use of land for different purposes, direct the development of settlement systems, and determine the location and structure of all superior technical infrastructure.

Local administration–Municipalities

The municipalities are preparing comprehensive and detailed plans, securing their implementation and participating in county plan production:

- Comprehensive plans are covering the area of a city or a rural municipality or a part thereof, or several municipalities. Every municipality must have such plans. The plans are forming the concrete principles for the spatial development in the area covered by the plan. Preparation of comprehensive plan is obligatory in the case of an object with significant spatial impact and forms the basis for its location selection. The comprehensive plans are binding for the detailed plans.

Comprehensive plans shall be initiated by the municipal Council, but they may be worked out by all entities from the National Government to private individuals. Local government organises and finances production of the plan (which in practice means that the municipality does it with its own resources or orders it from a consultant).

Comprehensive plans must have concert of the local governments neighbouring the planning area. Adoption of the plans lies in the sole competency of the municipal council.

Comprehensive plans must be produced in co-operation with the local governments neighbouring the planning area and the corresponding

county government. The local government also organises communication with the public during the planning process.

Comprehensive plans are displayed for four weeks in the centre of urban or rural municipality, the larger settlements of the rural municipality or the settlement for which the plan is being prepared.

The main objectives of a comprehensive plan are to form the principles of sustainable spatial development of the city or rural municipality; define the general land use provisions, location of main roads and technical infrastructure, and to secure protection and promoting of environmental values.

- A detail plan covers a smaller part of a municipality, and is the formal basis for building activity in the short term.

All persons can make proposals to initiate detail planning. The need for preparation of a detail plan is identified and the relevant task given by the Municipal Council or Municipal Government.

The municipality is responsible for making these plans and for communication with the public during the process, but they can transfer the production of the plans to entities or private persons, unless the plan covers protected area or when the area is not covered by a comprehensive plan. The municipalities most often have an architect employed for work with the detail plans. Municipalities can also transfer organisation and financing of detail planning to the owner of the land under planning or to a person interested in plan preparation with conclusion of a contract.

A detail plan is displayed for the public for two weeks in the centre of urban municipality or the rural municipality centre and in the corresponding settlement. The plans shall be approved by the municipality, and they must have concert of the corresponding sector authorities. Detail plans are adopted by the municipal council or municipal government.

Detail plans determine the final land use and building conditions. In detail plans, the local governments can give more restrictions than given by the comprehensive plans, and they can give specific project criteria – as the height and size of the buildings, number of buildings, functions, a list of aesthetic criteria, demands for type of houses etc.

2.3.2 Basic principles of the Act and objectives of different plans

The information above has here been put together in a tabular form.

Table 1. Types of plans and authorities in Estonia

Authority	State level			
	Central Government	County	Municipality (Local Gov.)	Private actors
Plan	Ministry of Interior			
National plan	Initiate Produce Approve by Gov.	Co-operating		
County plan	Co-operating Approved by Min.	Initiate if needed Produce if needed Adapt	Co-operating	
Comprehensive plan	Produce	Produce	Initiate Produce (duty) Approve	Produce
Detail plan		Initiate	Initiate Produce Approve	Initiate Produce

Table 2. Types of plans and content in Estonia

	Content	Legal impact
National plan	Main goals for sustainable and balanced spatial development. Direction of development of settlement system.	Guiding principles for county and municipal planning No direct legal impact.
County plan	Integration of spatial and economic planning, balance state and local interests, guidelines for planning, and location of main infrastructure	Binding for comprehensive planning. No direct impact on legal bodies.
Comprehensive plan	Principles of sustainable spatial development, general land use, location of main roads and technical networks, protection of environmental values	Urban areas: binding for detailed planning. Rural areas: Binding for all legal bodies.
Detail plan	Final land use and building conditions, plotting, and defining building rights on the plot.	Binding basis for all building activity and issuing of building permits. In urban areas: enforcing restrictions

On the one hand the planning system is hierarchic, i.e. the more a detail plan has to observe the valid more general plan. On the other - interactive, i.e. in case a more detailed plan requires modification of a more general plan, the necessary change comes into effect with enforcement of the more detailed plan. The PA expressly underlines the agreement nature of plans and the consequent co-operation requirement in all the phases of the planning process. The planning system is thoroughly interactive, and everyone can express their meanings or objections in the process. However, the procedures for detail plans are much stricter when the detail plan that is being prepared does not comply with the valid comprehensive plan, or when the processing of the plan has left unsolved issues, or when the areas are involving strong public interests.

County plans, comprehensive plans and detail plans are subjects to the same notification, co-operation and public participation requirements in principle, and there are given time limits for the steps in the processes. Prior to public display, plans must be formally concerted with these administrative units and sector authorities whose interests the plan concerns. The maximum time given for concert by law is one month.

Building activity must follow the approved detail plans – and these are the basis of issuing building permits. If there are complaints on a building project (which is not following the detail plan), the plan may be changed by following the same procedures one more time.

Everybody's building right does not exist in Estonia. In rural areas, the construction of new buildings and additions to existing buildings are permitted only on the basis of design criteria and building permits issued by local governments.

2.4 Borderline between public and private planning & building

Producing of comprehensive plans and detail plans are duties of the municipal administration, with focus on democracy and public participation in the process. But this often takes very long time, and both local administration and private companies want a higher speed in planning and building. For this reason the local administrations accept private planners to design plans based on initiative from the municipality, and the legislation also opens for this.

The owners' rights are very strong, and the legal basis for expropriation is weak – this is a problem in developing urban areas. In fact, an owner can stop the construction of technical infrastructure by denying use of his property for such purpose. The system for developing technical infrastructure is based on faith in market regulation: Private contractors, private companies or “half private companies” own the technical infrastructure – they also have the responsibility to supply urban areas with necessary technical infrastructure, and they must pay rental costs to the owners of the ground for this. But if the owners of the ground are unwilling to accept the use of their land, there is no legal way to force them to do so.

Social infrastructure, however, is owned by governmental institutions/municipalities. There is a discussion on the costs for the social infrastructure: Whether or not the big private contractors should pay a higher fee for building permits, to cover up for some of these costs.

2.5 Challenges

2.5.1 Challenges connected to the planning system

The most important challenges regarding the planning system as a framework for building activity are now connected to lack of plans on the municipality level, and lack of competence. The first period after independence, public participation and democracy processes in planning were also a challenge.

Lack of plans

The planning work had a new start based on the new legislation after the independence, and completion of all plans with democratic processes included takes some time.

The National plan has since then been worked out, based on the consequence analysis of several scenarios, but this plan does not give spatial or concrete directions for planning. By the end of 2005 there were also completed County plans covering all the municipalities, and the counties are now working on thematic county plans, according to guidelines given by the Government.

But on the municipality level, there has been a lack of plans up to recent time, especially in small rural municipalities. In towns, the comprehensive plans are prepared by the local governments, and in rural municipalities plans are prepared by planning consultants.

Without approved comprehensive and detail plans, the handling of applications for building permits is a difficult process, and will often take long time.

Lack of competence

The planning practice from the soviet period was not very useful for the planning work due to the new Planning and Building Act after the independence. Legislation and planning practices, especially of the Nordic countries and other European countries, were thoroughly studied in the drafting process of the law, and Scandinavian and German consultants were carrying out much of the planning work on the municipality level – but still there was a lack of experienced planning consultants/firms. This was a problem especially in the small rural municipalities.

In addition, the new system was based also on public participation, and the public were not trained in such participation. Financing planning processes may also be a problem: private parties may finance and carry out plans on the municipality level, but by using this provision municipalities are giving away part of their planning monopoly and investors sometimes get too strong a position in the planning process.

For more general plans (national and county plans and partly comprehensive plans) the law does not prescribe any restrictions to the producer of the plan, regarding qualifications or professional skills. Plans may be produced by persons to whom the Ministry, County Government or municipality has assigned the task. The author of a detail plan or head of the authors' team must have acquired higher education with the qualifications of architect or planner. The competence claims are then highest for detail plans, where the small municipalities will have problems fulfilling the claims.

To increase the planning competency of municipalities, the Ministry publishes manuals on planning, organizes seminars, workshops and study trips to other countries. The most complicated issue has turned out to be assessment of likely impacts arising from implementation of a plan – how to find the balance between optimum workload and optimum result.

2.5.2. Challenges connected to building policy

Housing policy

The general purpose of state activity in the housing sector is to provide all Estonia's residents with an option to choose their place of dwelling. The main task is then to create conditions in the housing market (legal regulation, institutional regulation and support measures) that would allow residential owners, tenants and citizen-initiated organisations in the dwelling sector to solve their problems independently and to carry out individual housing strategies.

The goals of the development plan are maintenance of the existing housing stock, increasing the flexibility of the housing market and diversification of the types of dwelling, and to mitigate problems with housing finance.

The housing development plan is targeted at broad population segments and at growing the middle class. To achieve higher effectiveness with limited resources, assistance is focused on specific target groups. Target groups are apartment unions, housing unions, apartment owners' alliances, young adults, young families, tenants of returned houses. In Estonia there has then been established a broad variety of loans, subsidies etc.

Private ownership

The next challenge has been to deal with private ownership – for all kind of buildings. The strong internal demands encourage investments in real estates. Now “all” properties are in private ownership – in the cities are only approximately 5–10% of the ground owned by the governments (state or local). This has created problems for establishing of public facilities, both technical infrastructure, social infrastructure, and other public purposes.

The Central Government has initiated inquiries into the matter of changing the law, and the focus on this will be to look closer into the owners' rights, and the structure for social infrastructure related to Public-Private Partnership (PPP) in planning. In addition, they want to check out the balance between the tasks and the resources for governmental officers.

3. Latvia

3.1 General information

3.1.1 Population

Latvia has approximately 2.3 million inhabitants:

- The population is multiethnic, with large minorities from other earlier soviet republics especially in the eastern parts of the country – partly illegally immigrated to the country during the soviet period. Ca 60% is ethnic Latvians.
- The Latvian language belongs to Indo-European language group, particularly to the Baltic language group. Ca 30% of the population is Russian-speaking – more than half of those are without Latvian citizen-ship.
- The religion reflects the diversity: Lutheran, Roman-catholic, Orthodoxy and more.

3.1.2 Constitution

Latvia is a democratic parliamentary republic.

The people exercise the supreme power through electing the Parliament (“Saeima”). Executive power rests with the Government. The head of State is the President of the Republic.

The country has been a member of both EU and NATO since 2004.

3.1.3 Administrative divisions

Latvia has 2 levels of authorities: State (including counties) and local governments (municipalities).

The State level is divided in central government and 5 District regions. These 5 regions correspond to the four regions from old times (look to “history”), and with Riga as a fifth region.

The 556 local governments are also divided in two levels: 33 of the municipalities have a regional or district function, and include 26 “counties” and 7 cities. The rest of the municipalities operate merely on a local or first territorial level. Currently, the Ministry of Regional Development and Local Governments has elaborated a reform concerning administrative-territorial division. This project foresees that current administrative

system will be transformed into 9 cities and 96 local governments. The reform is supposed to be completed by January 1st, 2009.

3.1.4 Administration of the building legislation

The Planning Act and the Building Act are two separate laws, and they are administrated by two different ministries. The Planning Act is administrated by the Ministry of Regional Development and Local Governments, while the Building Act is administrated by the Ministry of Economics.

The Building Department has 3 Units: Building Regulation -, Architecture -, and Strategy Unit.

3.1.5 General state of economy

The general state economy is rather strong with a high growth rate, but there is a rather low living standard for ordinary people, even if there is low unemployment. The state economy is based on banking and trade.

3.2 History/development of the building legislation

3.2.1 Short glimpses through history of Latvia

The history of Latvia is dominated by occupations from neighbouring countries because of their strategic position regarding both trade and military purposes (good access to the Baltic Sea).

Since ca. 2000 B.C., the country has been populated by 4 Baltic tribes, and they had different language, lived in different regions (Vidzeme, Latgale, Zemgale, Kurzeme), have different histories. These four regions are still looked upon as clearly different, and this is an important tribute to the identity of the country even today. These tribes were trading (mainly amber), and they were mentioned as “the Baltic Vikings”.

In 1201 a German bishop and his religious order entered the region and funded the city Riga, with the intension of christening the population. Riga became a Hansa League city, and the Germans were established as the superior class with Latvians as servants/slaves.

After the Great Nordic War (1558–1583) Latvia became a part of Poland-Lithuania, until the Northern part of the country was conquered by Sweden in 1621. In this period there was economical growth.

After a new war (by Poltava in 1709), parts of Latvia came under Russia, and during the following century the whole country gradually became a part of Russia. In this period, the population again suffered from poverty, especially in rural areas.

Latvia declared independence from Russia in 1918 after the Russian revolution, and again they had a growth period, in spite of political turbu-

lence and a coup in 1934. They kept their independence until 1940, when Soviet occupied the country. Under the World War II they had similar history as Estonia, with German occupation (1941–1944) before Soviet Union regained power.

Latvia declared independence from Soviet in 1991, and has since then been a democratic republic.

This brief passage shows that Latvia most of the time has been ruled by others through history, and their two independent periods have been rather short. “The golden age” of Latvia is held to be the period of “the Baltic Vikings” and the Hansa League period.

Under the Soviet period Latvia was forced into collectivization of the agriculture and occupancy of large areas for restricted military purposes. The Russian influence and culture are stronger in Latvia than in Estonia, mainly because of the current population. The liberation from Soviet was primarily politically motivated, and compared to Estonia they had a long and flexible “liberation period”.

3.2.2 Development of building legislation

The flexibility in the transition period also concerned the building regulations and legislation. Under the Soviet period, there were strict and detailed regulations and restrictions, with ca 1200 “Construction norms and provisions” (“SNIP”s). In 1991 the independent Latvia declared that the SNIPs should be a part of the Latvian legislation, as long as they did not oppose to the Latvian legislation. During the period of 15 years after this, the SNIPs have been gradually replaced by “Latvian Building Codes”, and since 2002 there are no mandatory SNIPs in the building regulation system of Latvia.

Since 1995 the Building Act has been an “umbrella law”, regulating the formal relations between the different components within the complete building legislation. The “General Construction Provisions” which are approved by a Cabinet of Ministers as “guidelines”, describe administrative procedures in more details. Besides there is lots of other building codes and regulations, which are to be approved by the Cabinet of Ministers.

The old building codes (the SNIPs and the new codes following the SNIPs in the first period of independence) were rather strict codes. But the new building codes are pointing to performance, based on claims for functionality. They are settled in the New Approach Directives, and are referring directly to Eurocodes. These new codes are especially dealing with issues related to safety, stability, health and more – primarily technically functionality claims.

The Building Codes are not handling design issues (for architects). The design is regulated by Planning Codes, to handle general claims for dwellings and public buildings. In addition, the design must follow guidelines on accessibility and universal design.

Establishing Latvian building legislation after the Soviet period has been a huge task. First, the work was driven only by experts – a group of civil engineers – and they started the work even before the independence. In 1993, a working group was pointed out to establish the guidelines for this work; to work out the “new Approach Directive”. This group was an association with experts (civil engineers and architects), public interests (representatives from the authorities/municipalities), and other stakeholders/actors in building activity (developers, investors, contractors, users of buildings etc.). The task for this group was to point out some legal “space” for the construction activity that could be more suitable for the developers, since the Soviet system was too bureaucratic and “slow-working”. The group should also balance all interests concerning this issue.

In spite of non-stop renewal of existing Building legislation and making better regulations, the very development of the industry makes it necessary to essentially reconsider the current legal basis for building and construction operations and define its development tendencies and dispositions for the upcoming 10 years. Hence, the Ministry of Economics is planning to develop new Building Guidelines for period 2008–2014, setting the priority as making it more competitive.

To ensure the duration of the Building and Construction industry and a better competition environment, a whole range of measures have been planned, specifically: Establishment of B&C Information System, reconstructing of supervision system in the industry, procurement of higher quality requirements, implementation of energy-saving systems, measures to secure qualified labour force in the industry, etc.

3.2.3 As a summary

Since Latvia got their own Building Act in 1995, there have been lots of simplifications when the earlier SNIPs (soviet technical standards) have been gradually replaced with Latvian building codes. There have also been simplifications concerning the certificates for actors. The building legislation is now divided in Building Act with principles and functional claims, and “General Construction Regulations”.

There are still on-going processes to simplify even more, towards building codes only for functional claims. In addition, discussions concerning further development of the Building Act are also focusing on the responsibility for the actors, especially more detailed demands on the developer, and on his responsibilities. They also focus on possibilities for electronically handling of cases, and necessary simplifications to achieve these goals.

However, there is another challenge: All parties in the construction industry should be more skilled – both in writing contracts and planning documents, and in the regulations in general. The client should refer to the actual standard or Latvian Building Code in the project documents.

The Ministry of Economics is planning to elaborate new Building Guidelines which provide trends for further building development. New Guidelines should be accepted in 2008.

3.3 Hierarchy of Planning systems and Authorities

3.3.1 *The types of plans and levels of administration*

There are four planning levels – two on state administrative level: National Plan and Regional Plans, and two local administrative levels: District Plans and Local Plans.

3.3.2 *State level*

The Ministry of Regional Development and Local Governments has the superior responsibility for the planning legislation and for the spatial planning activities. This Ministry also has the responsibility for the national Plan, while the Regional Plans are responsibilities of the 5 Regional Agencies (one in each administrative Region).

- The National Plan determines national requirements for use and development of the whole territory of the country and shall apply the whole territory of the State. The National Plan is a long-term plan, valid 20 year. This plan is mainly a strategic plan, including guidelines for physical development

In addition, this plan has a part with concrete regulations – that means directions for land use and restrictions of areas, when the purpose of the land use is of special national interest. Example of this is the Coastal Zone, which is given status as Restricted Area on this highest level of planning. (In the Coastal Zone, building is forbidden in a belt of 300 m from the coastline, with exception for urban areas where this restricted belt is only 150 m. from the coastline).

The National Plan shall be initiated by the Government, and be produced by the Ministry of Regional Development and Local Governments, and the plan shall be approved by the National Council. The Ministry shall also organize public participation in the national level of spatial planning processes.

- A Regional plan shall apply to the whole territory of the planning Region. It shall be developed observing the regional Policy Guidelines and the National plan, and sector development program. Regional plans shall be made by the Regional authorities, and shall be approved by the State authorities. These plans are also long-term

plans, valid 20 years. The plans have two sections: strategy plans and spatial plans, in two separate documents. Plans over regions determine development possibilities, trends and restrictions of territorial use.

By referring to the relatively short period of public spatial planning, they have not yet covered the country with regional plans; the major part of the country still lack these planning documents.

There is legal binding between the planning levels: When a plan on a lower level is disrupting from a superior plan, they must get approval from the superior level. But the regional level is rather weak in competence on planning, and also weak in number of persons/capacity. When the binding between planning levels were accepted in 2004, the State Level (Ministry of Regional and Local Government/Planning Department) had to support the regional level. State level is now checking all the Regional and Local plans, they are evaluating the local level's work, and they are giving support on competence.

3.3.3 Local levels

The local administration is divided in Districts and Municipalities, as mentioned above.

By "Districts" is meant 26 counties, and each of these counties covers ca. 15–20, up to 50 smaller municipalities. In addition the 7 major cities are Planning Districts.

By "Municipalities" are meant ca 530 small municipalities. The population of some of those is only 600 inhabitants. But as mentioned before, the Ministry has developed a reform which foresees transformation of the current administrative system into 9 cities and 96 local governments.

- District plans determine development possibilities, trends and restrictions for use of territory of these districts, and design current and define (permitted) use of territory as well as specified requirements. District plans shall cover the whole area of the Planning district.

District plans should co-ordinate planning interests in a district, and then be just a more local version of the Regional plans. But the Districts have not sufficient competence and capacity, and there is a political discussion about the importance of the district level. On this background, there is a public discussion whether this planning level still has any purpose or function, or if it should be laid down.

- A Local plan or detail plan shall apply to the whole territory of the local government. If this plan is not adequately determined in the utilization and building conditions of a concrete unit of land, this shall

be determined in a detail plan.

The Local plans should be the most important plans (the first step) for property use/territorial use. They specify the requirements of land use, and define building regulations and building density - and the District level should be the next step. The conditions given in a Local plan are legally binding for building activity.

But each of these municipalities lacks both planning competence and economical resources to carry out these plans. The State level therefore has the real authority on these issues, and supervises the lower levels closely. The Ministry shall approve all Local plans. Due to the lack of competence and economical resources, a need for co-operation and co-ordination between the municipalities is emerging. Several municipalities consider fusions (look to the reform mentioned above).

3.3.4 Basic principles of the Act and objectives of different plans

The information above has here been put together in a tabular form.

Table 3. Types of plans and authorities in Latvia

Authority	State level		Local level		
	Central Gov.	Region	District (county)	Municipality	Private actors
National plan	Initiate Produce Approve				
Regional plan	Supervise Approve	Initiate Produce	Co-operate	Co-operate	
District plan		Supervise Approve	Initiate Produce		
Local plan		Supervise Approve	Co-operate	Initiate Produce	

Table 4. Types of plans and content in Latvia

	Content	Legal impact
National plan	National requirements for use and development of the whole country. Mainly a strategic plan, with guiding principles for regional, district and municipal planning.	Normally no direct legal impact. But regulations of areas of national interest (like Coastal Zone) have legal impact.
Regional plan	In principle, a more detailed version of the National Plan. Two sections: strategy plans and spatial plan with location of main roads and technical networks.	Binding for planning on the local level. No direct impact on legal bodies.
District plan	Co-ordination of interests in the District, and in reality a local version of a regional plan.	Binding for planning on the municipality level. No direct impact on legal bodies.
Local plan	Final land use and building conditions, plotting, and defining building rights on the plot.	Legal impact on all building activity and basis for issuing of building permits.

The planning system is hierarchic. The more detail plans have to observe the valid and more general plans. The new Planning Law also emphasizes public discussion on every planning level.

In principle, a plan shall cover the whole territory of the administrative level (National plan shall cover the whole country, Regional plan shall cover the whole region and so on), down to Local plans, which are the legal basis for projects, and are needed for all building activity.

But until three years ago, most of the country did not have approved Local plans. Without a Local plan, every project must follow the procedures for open public hearings. This is still a problem in many of the municipalities, because the handling procedures takes longer time and leads to a lower building activity.

The municipalities are too small, and they do not have the competence and capacity to make all necessary plans – this work is often done in higher levels. Because of the significance of those plans, and the low degree of competence and capacity in the municipalities, the State level now evaluates all local plans. When they started this, the State level rejected almost 100% of the local plans (!)

The Ministry of Environment is a “hearing part” in the planning process, and they are especially interested in the Coastal protective zone. They want the inhabitants and the building activity in this zone to be connected to small villages, and they may be interested in giving less restrictions in such villages. But they claim that there must be a historical argument for declaring a group of houses a “village” – the definition of “village” will have significance.

The Inspectorate of Cultural and Heritage Protection has strong legal protection of their interests, and these aspects are good taken care of.

3.4 Borderline between public and private planning & building

In principle, all planning activity shall be formally initiated and produced by the authorities, even if private developers have proposals for some planning areas. But the authorities may in such cases order the private planners to produce parts of the plans on their behalf. In these cases, the local authorities still have the responsibility for announcing the applications for building permits in public, and warn the neighbours about the same. But the developer has to pay the costs for this.

If the projects are regarded as “big”, the local authorities arrange “public hearings”, and in these cases the developers often make more than one design concept, so the public hearing can have a more open-minded discussion. But public hearings are taking much time and resources.

Normally, when a developer presents building plans to a local administration, there are two options:

The local authorities accept the plans, and give the acceptance directly
 The local authorities disagree with the plans, and contact State level for assistance/superior meaning.

In both cases, the local democracy has not been heard. They often hear about the cases too late, and they therefore now demand hearings in every project – and this happens more often now. In the latest period, several projects have been stopped after hearings.

3.5 Challenges

3.5.1 Challenges connected to the planning system

Territorial planning has represented a major challenge since the independence. Under the Soviet period, the planning had been a more or less “secret procedure”, and there were no traditions, knowledge or practice connected to public discussions/public opinion about territorial planning and balancing of different interests and purposes. Procedures for handling public opinion were in focus when they should form the new legislation. The changes in the planning legislation from 1994 until today (2006) are reflecting this: They are mainly concerning guidelines for more public publicity, procedures for getting hold of the different views and stakeholders.

In the same period there was a gradual understanding about the significance of planning – that this is important for developing the country. The first period after 1994 had no legal binding between the planning levels, and combined with the weak planning traditions, there was emerging a need for upgrading. In 2004 the planning system was changed. Now

there is legal binding between the planning levels, and both land use and building restrictions are strict.

The major challenge is competence on the local levels. And in addition, the local level also lacks money, resources, time and more. This situation leads to dissatisfaction in the market: The private developers may regard the local planning administrations as lazy and uninterested, and they also regard planning as an obstacle without real significance.

3.5.2 Challenges connected to the building policy

The building activity/construction industry is number three in size of value in the country – Number one is banking activity (currency exchange), number two is oil (as a transit country). The construction activity is mainly carried out within the country borders. Statistics for the first half of 2006 says that only 7–8% of the construction volume is carried out abroad (and the activity abroad is divided 50/50 towards west and east). This export activity includes both single persons and greater companies.

The construction industry is then a large industry, but the lack of competence on almost all types of actors is a challenge. Many actors regard the building codes, standards etc. as complicated, and if the standards are not formulated as clear and formal claims, they will most often not be followed – and this leads to conflicts. This leads to a major challenge: All parties in the construction industry should be more skilled – both in writing contracts and planning documents, and in the regulations in general. The client should refer to the actual standard or Latvian Building Code in the project documents.

Another challenge is connected to private ownership. Under the Soviet period, almost all land was public property. During the 1990's, some properties were returned back to previous owners, and others were sold to private parties. The authorities did not have a clear policy on the price of property, and the privatization happened in a very high speed. The authorities did not secure the public interests in a sufficient way, and they now have problems with access to necessary area for technical infrastructure (roads, access to single properties and technical supply functions. Now they also have problems with a lack of properties on public hands for public functions (like schools, hospitals etc.).

Solving the challenges due to the privatization is an important task in planning. But the planning system is still “young and weak”, and at the same time they have to deal with the problems connected to illegal building activity.

4. Lithuania

4.1 General information

4.1.1 Population

Lithuania has ca. 3.4 million inhabitants. The number is diminishing.

- Statistics show that the urban population is ca 68%, and the rural population ca 32%.
- Ca 83% of the population is “ethnic Lithuanians” and speaks Lithuanian – a small West-Baltic language of Indo-European language group, but not closely connected to Latvian. There are minorities of ca 8% Russian-speaking and ca 6% Polish.
- The religion is mainly Roman-catholic (79%).

4.1.2 Constitution

Lithuania is a democratic parliamentary republic. The people exercise the supreme power, through electing the Parliament (“Seimas”). Executive power rests with the President.

The country has been a member of both EU and NATO since 2004.

4.1.3 Administrative divisions

Lithuania has three levels of administration: in addition to the state level, there are a county level and a municipality level. There are 10 counties, covering 60 municipalities (and 12 of these are city-municipalities).

4.1.4 Administration of the building legislation

The planning and building legislation is divided into two separate laws (the Planning Act and the Building Act), but under the same “umbrella”. Both laws are administrated by the Ministry of Environment, but by two different departments under this ministry.

The Planning Act is administrated by the Territorial Planning Department. The Building Act (“construction law”) is administrated by the Construction and Housing Department.

4.1.5 General state of economy

The State economy is rather strong, with a high growth rate – primarily due to trade with EU. But the wages are low compared to the old EU-members – and emigration to other EU-countries is a main explanation on the reduced number of inhabitants. The country has full employment.

4.2 History/development of the building legislation

4.2.1 Short glimpses through history of Lithuania

Lithuania is a former great kingdom/principality, and has strong connections to Poland and other Central-European countries.

Originally, the population was Baltic tribes, and they were trading with Scandinavian and Slovenian countries. The country became a kingdom in 1253 and then a principality in 1263. As principality, the country expanded the next centuries, and by ca 1400 it was the greatest country in Europe – reaching from the Baltic Sea to the Black Sea.

Lithuania joined Poland in a Union by a royal marriage in 1386. The Polish-Lithuanian Union lasted up to 1795, and even though this union was “on-and-off” depending on small controversies or new royal marriages, this was a long and stable period and a “golden age” for Lithuania. In this period, the Polish influence in Lithuania also grew strong.

The Polish-Lithuanian Union was threatened both from Germany and from Russia, and gradually lost land to Russia and partly to Germany (Prussen). In 1795, the Union was divided in three parts: Russia got hegemony to ca 90% of the former area of the Union, and the rest was divided on Germany (Prussen) and Austria.

In 1918, Lithuania declared to be an independent kingdom, but already later the same year, they changed the constitution to be a republic, and in spite of territorial disputes with Poland and Germany, they kept their independence until occupation from the Soviet Union in 1940. After a period during the World War II with German occupancy (1941–1944), they were again a part of the Soviet Union until the fall of this Union.

Lithuania declared independence already in March, 1990, but they were accepted as such by other nations first in 1991. Lithuania had a long and flexible “liberation period” from the Soviet regime, and the transition period ended with their formal independence September 6, 1991, and complete Russian withdrawal in 1996. The liberation from Soviet was politically motivated, and Lithuania has since then been a democratic republic.

This brief passage shows that Lithuania has strong historically ties to Poland, and also a great influence from Germany, Austria and Russia/Soviet. The country has a history as a former great power in Europe, and mentally they are closely connected to the Central Europe.

4.2.2 Development of building legislation

Main focus in the development of the planning and building legislation after the independence has been democracy – introducing open planning processes with hearings of public interests, announcements in papers and more. This had to be done for all planning levels in the planning hierarchy.

Second focus in the same period has been simplifications in the Construction Law, so that it would be easier to use the legislation. In this work they also should implement all the EU-directives – preparing for a membership in EU.

There are no national requirements in addition to the CPD requirements. The Construction Products Directive 89/106/EEC is fully transposed to the National Law by the Law on Construction (Building Act) and by the Building Technical Regulations (STR). Lithuanian national requirements will not constitute a barrier for a consultant or a contractor from any foreign country. Each consultant or contractor from Lithuania or from abroad has equal conditions for the work.

They are still working on implementing the directives from EU, including EU approval of construction products, guidelines for health & security and more. The main “direction” on the changes in the law the last years has been to adopt and adjust to EU-systems in all ways. EU is monitoring this closely, and has several inspections to see if their systems are implemented on all levels. In this period, the building legislation has been moving from more strict building demands and specific technical claims to guidelines and functional claims.

The building legislation is not a complete and well functional system yet – they are still working on the improvements. But it is not a big problem anymore – now they have a focus on simplifications, both for handling procedures and for the public understanding and use of the legislation.

The challenges for the construction sector are also connected to funding. On the housing sector there are needs for both investments and maintenance, but there are no strong traditions for borrowing money for this, and there are large groups with insufficient income. The State has initiated a housing program for funding some of these tasks from the state budget.

4.3 Hierarchy of Planning systems and Authorities

4.3.1 The types of plans and levels of administration

Lithuania has three levels of administration: in addition to the state level, there are 10 counties, covering 60 municipalities (and 12 of these are city-municipalities). The types of plans according to the “Law on Territorial Planning” do not follow the levels of administration, so an overview showing the planning hierarchy goes directly to the type of plans.

A. General plans are “master plans” operating on a strategic level, and they are directly binding for the next underlying level. There are general plans on:

- a) State level (covering the territory of the whole country)
- b) County level (covering the territory of the whole county)
- c) Municipality level I (covering the territory of the whole municipality) (= “Comprehensive plans”)
- d) Municipality level II (covering parts of the municipality territory)

The processes of making General plans shall comprise:

- Studies/analysis of the forecast for the territory, including social and economic issues and more.
- Drafting and approval of the master plan. The master plans shall present solutions or their alternatives for meeting the projected planning objectives, the intended purposes and priorities of land use shall be defined, including strategy for development and impact on environment.
- Operative planning: This includes a program for implementations of the solutions given in the master plans for development of the territory covered by the plan, in all regards.

The administrative level responsible of making a general plan corresponds to the political level which shall approve the plan (i.e.: general plans on state level shall be approved by the Government, on county level by the County Council, and likewise Municipality Council). The political levels also formally initiate the planning. There is an obligation to cooperate planning with neighbouring counties and municipalities on these levels. There is also an obligation to open for public opinions on the planning work, by announcing (and more).

B. Special plans shall be organized by public authorities, county governors, municipality boards (mayors), and legal and natural entities.

The following may be the objects of special planning:

- The land stock of the country, including forest land and water resources
- Social, cultural and economical activity on the territory under planning
- Systems of infrastructure and their parts
- Protected territories, their systems, natural and immovable cultural properties

The documents will be maps and plans showing all existing and planned objects mentioned above, including projects for communications, energy, transportation or other infrastructural facilities. As for the general plans, the process shall comprise studies/analysis, drafting and solution.

The purpose of these plans is to secure all necessary infrastructure/technical facilities and to define special purposes of public interest or for public functions – like protecting cultural heritage, or giving directions for building activity that may be controversial, like tall buildings (changing the skyline).

C. Detail plans

These are the same as “Local plans” in some other countries, and are regulating the land use of each property, including legally binding guidelines for the building activity and for exploitation of natural resources. The objects of these plans are land plot, forests or their groups, territories of towns, townships or their groups, and village territories.

Detail plans can be organized by municipal councils, or by land owners, land users or state land managers. In the planning process, they shall observe the master plans for the territory, and incorporate all the directions given for the planning territory. There is an obligation to open for public opinions on the planning work, by announcing (and more), and to co-operated with the territorial planning supervisory body.

4.3.2 Basic principles of the Planning Act and objectives of different plans

Some of the information about the planning system has here been put together in a tabular form.

Table 5. Types of plans and authorities in Lithuania

Authority Plan	State (Central Gov.)	County	Municipality (Local Gov.)	Private actors
General plans	Initiate Produce Approve	Initiate Produce Approve	Initiate Produce Approve	
Special plans	Initiate Produce Approve	Initiate Produce	Initiate Produce	
Detail plans			Initiate Produce Approve	Initiate Produce

Table 6. Types of plans and content in Lithuania

	Content	Legal impact
General plans	Strategic master plans, shall balance all issues of strategic matter on the territorial level they are operating	Binding for planning on underlying planning levels. No direct impact on legal bodies.
Special plans	Strategic plans for special purposes, mainly connected to technical supply and infrastructure, objects for protection or cultural value, or objects of special/controversial public interest	Binding for planning on underlying levels.
Detail plans	Legal basis for building activity, and for exploitations of natural resources.	Legal impact on all building activity and basis for issuing of building permits

The main principles states that both General and Strategic planning shall be done on all the three administrative levels, and the superior plans are binding for the underlying plans. So also for Special plans, which are dedicated for special purposes of public interest or public function.

Detail plans are the basis for building activity, and are a responsibility of the municipality level – even if such plans may be initiated and produced by private parties. Detail plans shall follow all directions given in General and Special plans.

Democracy in planning has a special attention, especially because EU is monitoring this aspect.

All plans, projects and applications for building permits are put on public display for one month. After this period, building shall be approved if the project is coherent with the comprehensive plans and if there is no complaints or other obstacles.

If the project is not in line with the approved plans, the building permit will not be approved, and the applicant must either change the project or ask for a change of the plans – with full procedures for a planning process. Then he may come back with a new application for a new full procedure for getting the building permit.

State supervision of territorial planning shall be exercised of general planning on state level by the State territorial Planning and Construction inspectorate, on the county level by the Ministry of Construction and Urban Planning; and of general, special and detailed on municipality level by the county governor.

To exercise supervision, there are qualification claims and claims for certificates on the competence (as architects, engineers, water management, land management and more).

4.4 Borderline between public and private planning & building

Developers, land owners, land users and managers may initiate and design Detail plans. But all plans both designed by authorities and by de-

velopers must be approved by the Municipality Council. Private consultants may also produce parts of General or Strategic plans on behalf of the planning authorities (and then paid by the authorities), but Detail plans on their own initiative will be on their own cost.

Developers with large building projects have to follow the General plan/Comprehensive plan on municipality level and even have a Detail plan for the building site property (– and if there is no plan, they must propose one.)

Democracy and public hearings have great focus (also because of the monitoring of this from EU), and it cannot be given dispensation from the claims for public hearings.

Dispensations from the Comprehensive plans are only possible if the Municipality first consider the consequences for the public interests and find that public interests will not suffer.

After the liberation, there has been a very high construction activity – mostly in the cities. Developers or construction companies buy land – directly from the state, or from private persons who have bought their land from the state as heirs of previous owners – and they then build and sell houses/flats and office buildings.

4.5 Challenges

4.5.1 Challenges connected to the planning system

The Law of Municipalities sets as an obligation that the municipalities have to make city-plans covering the whole municipality – that means General plans on the municipality level (Comprehensive plans) with legal binding for plans lower in the planning hierarchy. The lack of money and/or capacity to make comprehensive plans is a challenge. The municipalities may hire private planners to make these plans. Often the Special plans are made first. All Comprehensive plans must be completed within the end of 2007.

On the state and county levels, the challenge in planning is to balance the interests in territorial use between the purposes and the interests, and this is further described in the Preamble of the Law on Territorial Planning. The land use given in the Comprehensive plans has legal binding. The Special plans on county level and for cities shall also take decisions regarding establishments of shopping centers/malls – which may be controversial.

The Special plans are of great importance to secure the interests of the society, and Lithuania has a separate law for expropriation of land for purposes mentioned in the Special plans. Expropriation of land for these purposes usually takes half a year.

4.5.2 Challenges connected to the building policy

Re-privatization of land after the Soviet period is a challenge, and in a way the whole legislation is concerned with this issue.

Under the Soviet period all building activity was performed by the State, but after this period most of the building activity has been performed by private actors. Before the last world war, people in Lithuania owned their own farms/land, but after the war, the State was the owner of all properties. After the liberation they are now reversing this, by selling back to private ownership/previous owners. This is a very complicated process – the program should be completed by the end of 2008, but they do not think this is a possible goal. Where they cannot find the previous owners or their heirs, the State is selling to others.

There is some pressure on getting enough possible building sites, and especially a pressure on converting rural (agricultural) areas into suburban building sites. The national guidelines try to meet this pressure by saying that there can only be one living house pr. property, and the owner of the property must be living in the house himself. In this process there is a need for protection of agricultural interests, and they have a special “Land Law” aiming at protection of agricultural land – that means that the land use is protected from change of purpose from agriculture to construction sites.

In the planning system, they do not differ between the purpose “cottage/summer house” and the purpose “family house/dwelling”. In the coastal zones, there are lots of small houses (45 m²) without electricity or water supply, and these are now upgraded to permanent dwellings – (and this is regarded as legal, but against the state guidelines and intentions).

To improve and encourage maintenance of buildings, and to help low-income families on the housing market, there is a Lithuanian Housing Strategy, aiming at making analysis for the housing situation, to form the goals, priorities and measures of a housing policy, and to supervise the implementation of this. They also have a variety of economical subsidies to help fulfilling these goals.

5. Poland

5.1 General information

5.1.1 Population

Poland has almost 38.2 million inhabitants and the number is relatively stable:

- Earlier to some degree multi-ethnic, but since WW2 ca. 97% of the population has been “ethnic Polish”. The Polish language is of the slavish language family.
- The religion is Roman-catholic (90%).

5.1.2 Constitution

Poland is a democratic, parliamentary republic. They have a two-chamber parliament (consisting of Sejm and Senat).

5.1.3 Administrative divisions

Poland has four levels of administration.

Poland is divided in 16 administrative Regions (called “Wojewodztwo” or Voivodships). The Voivodships are divided in 379 Counties (called “Powiaty”). These are again divided in 2,478 Municipalities (called “Gminy”).

The country has been a member of both EU and NATO since 1994.

5.1.4 Administration of the building legislation

The Planning and Building Act is administrated by the Ministry of Transport and Construction. This Ministry has 18 different research institutes (departments), and political leadership.

The Department of Spatial Order has the responsibility for planning activities (and the Planning Act), and the Department of Architecture and Construction has the responsibility for building activities (and the Building Act).

The General Office of Building Control and the Chief Inspector of Construction Supervision, are independent central offices (agencies) connected to the Ministry of Transport and Construction.

5.1.5 General state of economy

Poland's general economy is strong and stable, and within EU the strength of Poland's economy is regarded as number 6. They had a "shock therapy program" during the 1990's, when they converted from planning economy to market economy, and when they restructured and privatized the transport and energy sectors. The private sector is now strong. The most important "pillars" for the economy, is clothes, IT/electronics, technology/machines and medicines. They also have a large agricultural sector, but this is under-invested. The country has high unemployment which leads to emigration to EU.

5.2 History/development of the building legislation

5.2.1 Short glimpses through history

The country has a turbulent history – having been both one of the strongest powers in Europe, and almost wiped out of the map.

From ancient times, archeologists state that the region has been multi-ethnic. The first Polish state was emerging in 966, and became a kingdom in 1025. In 1386 they joined Lithuania by a royal marriage and confirmed a stronger union in 1569. The Polish-Lithuanian Union should last until 1795 – "on-and-off" depending on small controversies or new royal marriages, and this was a glorious period in the history of the country.

When this Union broke down, Poland was not a state for 123 years. The territory was divided between Germany (Preussen), Austria and Russia, and this period were marked by partisans, several rulers, tendency to anarchy and dependence on Russia. The period lasted until they declared independence in 1918 – an independence they lost again under World War II, when they were occupied by Germany and the Soviet Union. After the war, they were promised independent elections, but in fact they were controlled by the communists.

Poland declared independence in 1952 and got their own constitution, but as a part of the East-bloc countries they were controlled by the Soviet Union. However, there was a political resistance against the regime, and the trade union "Solidarity" gained power. After a period with strikes and economical unbalance, Solidarity won the election in 1989, and Poland broke their political ties to Soviet.

This brief passage shows that Poland have had a turbulent history, but their will to be a part of the Western European society is strong, and they have adapted well to EU's economical system.

5.2.2 Development of building legislation

The current Law on Construction is dated July 7, 1994. This law was based on former laws without major changes, but during the years since the law was confirmed, there has been made approximately 30 changes in the law – initiated politically when “Solidarity” came in position.

Before 1994 the issues for construction, physical planning and housing were put together in the same law, but these issues were divided into separate laws already in 1991. The Architectural and Design Act is in some ways related to the content in the Planning Act in other countries, but the law on Spatial Management is dealing with most of the issues of Planning Acts. The legislation for land management is not fully approved.

Construction Act is corresponding to the content in the Building Act in other countries.

In spite of the changes, there has been some public criticism saying that there has not been enough changes of the law in this period – not as many nor as major as expected/hoped for. This may be explained by the strong traditions of power to the bureaucracy – which may still be a problem.

The Building Act is now a bit like a patchwork, and there is a common understanding that the best thing would be to design a completely new law based on new ideas. The challenges and goals for the work with a new law are mainly considered to be more responsibility to the actors, shorter handling periods for building permits and less power to the bureaucracy – and they would then hope for a more predictable handling and outcome. The government had promised a new law confirmed in 2006, but there are no on-going processes to fulfill this promise.

5.3 Hierarchy of Planning systems and Authorities

5.3.1 The types of plans and levels of administration

The Planning system consists of four levels – related to the four levels of administration.

National level:

- A National plan is a strategy plan for the whole country. The plan provides guidelines and major dispositions, and there will also be drafts on a national physical development concept plan, to secure sustainable development, necessary distribution of social and technical infrastructure (including water and energy supply).

Regional level (Voivodship):

Regional plans (called “Voivocier plans”) cover the whole territory

in the region. The plans define directions for spatial development, in accordance with regional needs and objectives, and they shall coordinate major interests within the functional and administrative region.

County level (“Counties”; districts/provinces/powiaty):

- District plans/County plans (also called “Province plans”) are similar to comprehensive plans in other countries, and they are detailed coordinating plans, with more specific directions for disposition of spatial area. This “province level” usually covers the area of more than a municipality.

Municipality level (“Municipalities”; communities/Gminas):

- The municipalities shall provide “Community plans”, which are similar to “Local plans” or “Detail plans” in other countries. These plans give specific directions for the building activity, and they may cover a municipality (urban plans for cities), or a smaller area within the municipality (rural plans).

5.3.2 *Basic principles of the Planning Act and objectives of different plans*

Some information about the planning system has here been put together in a tabular form.

Table 7. Types of plans and authorities in Poland

Authority Plan	State level		Local level		
	Central Gov.	Region	County	Municipality	Private actors
National plan	Initiate Produce				
Region plan		Initiate Produce			
County plan			Initiate Produce		
Local plan				Initiate Produce Approve	Initiate Produce

Table 8. Types of plans and content in Poland

	Content	Legal impact
National plan	Main goals for sustainable and balanced spatial development. Direction of development of settlement system.	Guiding principles planning. No direct legal impact.
County plan	Integration of spatial and economic planning, balance state and local interests, guidelines for planning, and location of main infrastructure	Directives for underlying plans. No direct impact on legal bodies.
County plan	More detailed plans with for principles for spatial planning in the county	Directives for Local plans. No direct legal impact
Local plan	Final land use and building conditions, plotting, and defining building rights on the plot.	Binding basis for all building activity and issuing of building permits. In urban areas: enforcing restrictions

There is not a “legal binding” between the levels within the planning hierarchy, but there is a kind of more “soft obligation” to provide a direct corresponding to a superior plan.

However, there is a legal obligation for the building activity to be in accordance with a confirmed Local plan (= Community plan) – and this is absolutely necessary to get a Building permit.

Local plans are to be approved by the Municipality – and this is both a “professional” approval by the local administrations, and a political approval by the Mayor.

5.4 Borderline between public and private planning & building

Formally the Local plans should be made by the authorities, and they would under all circumstances have to approve a plan. But there is also a possibility for developers to make the plans, and then ask the authorities for approval. Often this may be done in a cooperation between the developer and the authorities (for instance, as an agreement for Public Private Partnership). In other countries such procedures may be economically motivated (by both parties), but this is not the case in Poland – here it may be a necessity because of a lack of Local plans, and without Local plans all the construction activity will end in a state of torpor.

For those reasons approximately 60% of the building activity in Warsaw is based on private plans (and this rate is increasing), and for smaller towns and villages 90% of the activity are based on such private plans.

If the Local plan is lacking and the developer wants to make a plan, the local authorities have to define the procedures, and normally this follows two steps:

- The developer must first ask the Mayor for a general approval of the project (and the Mayor will answer yes or no only to the “general

idea” of the Project). The Mayor will then define a set of building conditions for this project, in special guidelines. These guidelines are not general and/or public – they are defined for each project by the Mayor himself (without a public hearing or public participation in any way).

- The developer must then make and send an application for the project, in line with the given building conditions. There is no citizen participation in this process.

When a “normal Local plan” made by the authorities is handled, it is an obligation to put it on display for “public hearing”, to get hold of the public opinion on the plan. The public opinion should be listened to both for the spatial plan and for the building conditions/guidelines. In this “ordinary planning system” the start of work on a new plan is to be announced in the newspapers, and also the period for public display shall be announced. There are certain time limits for all steps (example: 21 days for giving an opinion).

When a “private plan” made by the developer in line with the procedures mentioned over, the plan is not put on display for “public hearing”. The Mayor decides by himself, and there is no public opinion to be listened to. The developer makes the plan, he pays a fee (the size of the fee decided by the Mayor), and then he will get it handled (and approved).

There are some obstacles connected to these procedures. The most important of these obstacles, is that the developer often gets very vague and imprecise guidelines at the first contact with the Mayor, and the process/approval may be unpredictable. In addition, approving of any plan – private or public – takes long time, and thus building activity can be delayed.

Local plans for building a new shopping center (more than 2000 m²) can not follow the procedures for Private plans, but must be treated as a normal plan, and must be approved by the county or region authorities – normally the level above the level for ordinary Local plans.

In 2004 a new law for regulations of the PPP-activity was confirmed, but this law is a bit too complicated for the actors, so it is difficult to use – it is therefore not working as well as intended. The Ministry is working on improving this law, and for further general changes of procedures they are consulting neighbour countries within EU (France, Germany, Great Britain and the Czech Republic).

5.5 Challenges

5.5.1 Challenges connected to the planning system

The Municipalities lack the economy and the administrative resources to make plans, and there are no formal obligations to make plans, due to

lack of appropriate legislation. Due to this, there is a lack of plans, which leads to low building activity. This challenge is increasing year by year – and has great influence on housing costs and general economy.

In the cities, most of the ground area is already built on, and this may also be an argument for not making new plans – a new plan should then be a plan for the conditions and the content of the already built-up constructions, and this is not what a normal local plan provides. But also for reconstruction, rebuilding or other building activity concerning existing houses, there must be an approved Local plan for the area before they can get a Building permit – which is necessary before starting any building activity.

The lack of confirmed Local plans, especially in the bigger cities is considerable. As examples can be mentioned that the ground area covered by Local plans in Warsaw only are 13% of the total ground area, in Krakow only 5%, and in Poland as a whole country only 20%. In some parts of the country the situation is better, as in Gdansk with 60% coverage, and in some smaller municipalities with 90% coverage.

The lack of obligations to make plans has also been a political issue. Today they have no appropriate legislation for dealing with spatial management within a system based on a free market. A proposal for a new law for physical planning and spatial management was made in 2003, but this proposal was not confirmed in the Parliament – mainly because the majority of the Members of Parliament meant that there should be two (different) laws to handle this, while the minority and the administrators pointed out that this would be impossible in practice. The result of this is that they operate without the appropriate formal legislation. The law is published, but not approved. And there is no current time schedule for new attempts to get an approval or for a discussion whether the new law should be divided or not.

5.5.2 Challenges connected to the building policy

To get a Building Permit, it is necessary to have a complete building design which is in accordance with a confirmed Local plan for the area. This makes the lack of plans to a major problem for increased building activity – in spite of efforts from the Ministry of Transport and Constructions to encourage building activity (because of a noticeable lack of dwelling). In addition to lack of plans, there is also a certain amount of unpredictability connecting to developing private local plans.

Thus, in spite of the effort of the Ministry, the building activity in fact is decreasing: In 1990 there was built 190,000 flats, and in 2005 there was built only 108,000 flats. There is a large number of plans and building approvals of building permits to be handled, but there is low activity to do so.

In addition, the costs for a new building site are very high, and it is necessary to prove the ownership of the property for an actual construction object – which also may be a challenge.

6. Comparison of the context for the building legislation

6.1 Comparison of the historical context and “building legislation history”

6.1.1 General information

By first sight, persons in other countries may look upon Estonia, Latvia and Lithuania as small countries with great similarities in every aspect – especially because they also share the parachute notion “Balticum”. They are three neighbouring democratic, parliamentary republics with similar sizes and rather similar history for the last century – and they all declared independence from the Soviet Union 1991, and they got their membership in EU in 2004. Poland, however, is a country more than ten times as big regarding population, and with a history that differs from the others on central parts. This information has been put together in a tabular form.

Table 9. Some basic information on the countries, in numbers

	Population	Lib. declared	Lib. completed	EU member
Estonia	1,4 mill.	Aug. 1991	1994	May 2004
Latvia	2,3 mill.	May 1991	1994	May 2004
Lithuania	3,6 mill.	Jan. 1991	1993	May 2004
Poland	38,2 mill.	1952	(1989/90)	May 2004

But the countries also differ on important basic parameters. They have different religions, different homogeneity of the population – and they do not understand the language of each other. This means that they have important differences in some cultural aspects. Some of this information has also been put together in a tabular form.

Table10. Some background information related to the populations

	Religion	Language
Estonia	Lutheran - but rather secularized	Estonian is of Finno-Ugric language group. 30% Russian-speaking
Latvia	Diversity: Lutheran, Roman-catholic, Orthodoxy ++	Latvian is based on Baltic tribal language. 30% Russian-speaking, but only 56% ethnic Latvians
Lithuania	Roman-catholic	Lithuanian is based on west-Baltic tribal language. 8% Russian-speaking, 6% Polish-speaking
Poland	Roman-catholic	Polish is of the slavish language family

The number of levels of administration follows the size of the population: Estonia and Latvia have two formal levels of administration, Lithuania has three levels of administration, and Poland has four levels of administration. But in some countries, some of these levels are again divided on two levels.

All the four countries have rather strong state economy, but low wages compared to “old” EU-countries. The three Baltic countries have low unemployment, while Poland has high unemployment. But all the four countries (perhaps Estonia a bit less than the others) experience that skilled workers emigrate to “old” EU-countries – from the Baltic countries mainly for personal economy reasons and from Poland because of the unemployment. This is mentioned here because it may affect the quality in planning and building activities or handling of quality claims on the actors.

6.1.2 History/transition period – and development of the building legislation

We have pointed out some obvious similarities in the recent history of the countries. But the long historical perspective shows that the histories of the countries in fact are very different. This has had impact on the mental attitude to both the transition period after the independence from the former Soviet Union, and on their ideological approach when they should form a new building legislation. The main points from these historical lines are put together in a tabular form.

Table 11. Outline of the history and impact on the new building legislation

	Outline of the history	Impact on the building legislation after declared independence
Estonia	A strong Scandinavian influence. Their "golden age" was ca 1560-1710, when they were a part of Sweden. Then: Russian/Sovietic dominance, but they had contact with Finland (TV).	A totally new building legislation. They used models mainly from Finland and Germany.
Latvia	Dominated by occupations from neighbouring countries, with a strong German and later Russian/Soviet dominance. May have had a "golden age" in the times of the "Baltic Vikings", and also a richer period under Hansa League -influence.	The legislation is based on the former Soviet legislation, and gradually transformed – mostly by expert advice. Simplified and made more flexible.
Lithuania	A strong influence from Poland and Central-European countries. Their "golden age" was the long period in union with Poland (1386-1795), when they were one of the strongest powers in Europe, and their territory reached even to the Black Sea. After that, Russian/Soviet dominance.	A totally new building legislation. Models for new legislation were based on adapting and adjusting directly to EU-legislation.
Poland	A turbulent history, having been both one of the strongest powers in Europe and almost wiped out of the map. Their "golden age" was the period in union with Lithuania. But the country has also in recent history had some internal political turbulence.	The legislation is dated 1994, but based on former legislation without major changes. There have later been several changes, but the legislation now may seem a bit like a patchwork, and there is a need for major changes or a new law.

This tabula points out that there is a strong connection between the history of the country and their approach to form the new building legislation. Even if the three Baltic countries all were a part of the Soviet Union and there had a common building legislation up to their declared independence in 1991, they now have formed their building legislation in different directions, and they have used different mental models for this work – based on their different histories, and maybe also on their cultural differences. In Poland, the focus has been on political and economical transformation, and they have not formed a totally new legislation; they have just had a gradually and minor transformation of former legislation, and the present legislation seem to need a complete renovation.

6.1.3 Administration of the building legislation

In many of the Nordic countries, the planning and building legislation are put together in the same law, even if the responsibility and administration of the legislation may be divided on different authorities. This is not the case in the three Baltic countries, but Poland has a joint law.

The administration of the planning and building legislation has here been put together in tabular form.

Table 12. Administration of the planning and building legislation

	Division of legislation	Administration of Planning legislation	Administration of Building legislation
Estonia	Two separate laws	Ministry of Internal Affairs	Ministry of Economic Affairs
Latvia	Two separate laws	Ministry of Regional Development and Local Governments Development Planning Department Spatial Planning Department	Ministry of Economics Building Department
Lithuania	Two separate laws	Ministry of Environment Territorial Planning Department	Ministry of Environment Construction and Housing Department
Poland	One common law	Ministry of Transport and Construction Department of Spatial Order	Ministry of Transport and Construction Department of Architecture and Construction

We see that Estonia and Latvia have similar division and administration of this legislation, with ministries of internal affairs as the formal administrators of the planning legislation, and ministries of economics as the formal administrators of the building legislation.

Lithuania and Poland have both the same ministry as administrators of planning and building legislation – even if it is not the same ministry in the two countries; Ministry of Environment in Lithuania, and Ministry of Transport and Construction in Poland. In both countries the planning legislation is administrated by a Planning Department, while the building legislation in both countries is administrated by departments with direct responsibility for the construction industry.

The differences between the countries shown in the tabula may be connected to political priorities for the planning and building sectors, but this issue is not an item for this report – even if this can have had influence on the development and priorities within the legislations. Here is just stated that there are differences in the administration of these legislations.

6.2 Comparison of the planning hierarchy as context for building activity

6.2.1 *The hierarchy of authorities and of planning system*

The levels of authorities and the levels of plans in the planning hierarchy are closely related, but not identical. In addition, it may be difficult to define the levels of the authorities, as the “county level” may be considered as a delegated part of the state level in some of the countries, while others look upon the “county level” as a coordinator of a group of municipalities. In the following comparison, this formal status of the differ-

ent levels are not taken in account, to get a better understanding of the connection between the levels of authorities and the levels of plans.

However, the main focus in this report is the building legislation, and both the levels of authorities and the levels of the planning systems are just a part of the context in which the building legislation operates. The focus will therefore be to see how the planning system works as basis for building activity. In the following tabular, the levels of authorities and types of plans including their impact on a building project are put together.

Table 13. Levels of authorities and types of plans

	Authority	Type of plan	Significance of plan
Estonia	Central government	National Plan	Strategic plan. Binding for underlying plans, but not by legal impact
	County	County plan	Guidelines for spatial development. Binding for underlying plans
	Municipality	Comprehensive plan	General land use, location of infrastructure. In urban zones binding for detailed planning. (In rural zones: legally binding).
		Detail plan	Final land use and building conditions. Binding for building activity.
Latvia	Central government	National Plan	Strategic plan. Guidelines. Binding for underlying plans, but not by legal impact
	Regional authority	Regional plan	A more detailed version of a National Plan, where interest are balanced. Binding for underlying plans
	District authority (county)	District plan	In principle, a more detailed version of a regional plan. (The importance of these plans is discussed).
	Municipality	Local plan *)	Final land use/building conditions Binding for building activity
Detail plan		A more detailed Local Plan, where this is necessary. (Binding for building activity)	
Lithuania	Central government	General plan I	Strategic master plan. Guidelines. Binding for underlying plans, but not by legal impact
		Special plan I	
	County	General plan II	Strategic plan, more detailed and with directions for spatial planning. Binding for underlying plans.
		Special plan II	
	Municipality	General plan III	Strategic plan – even more detailed. Covers the whole municipality. Binding for detailed plans.
Strategic plan III			
Detail plan	Final land use and building conditions. Binding for building activity.		
Poland	Central government	National Plan	Strategic plan. Guidelines. No direct legal impact.
	Region (Voivodship)	Regional plan	A superior spatial plan, where also economical interests are balanced. Binding for underlying plans.
	County (powiates)	District plan	A more detailed plan with directives for spatial planning. Binding for community plans.
	Municipality	Community plan	Final land use and building conditions. Binding for building activity

*) Local plans here include detail plans which are mandatory for protected zones and forests and agricultural land transformation areas.

The main principles are the same in all the countries: On national level, the plans are strategic and give guidelines and directives, while the most detailed level is giving the instructions for final land use and building conditions, and is legally binding and the formal basis for building activity.

In all the countries, there must be an approved “Local plan” as a frame for the building activity, and they shall cover the whole territory of the municipality. Without such plans, there should not be issued building permits – which is necessary to start a construction work.

The principle is then that the public opinion rests on the planning process – and a building project shall be in accordance with the approved plan where the democracy is taken care of.

6.2.2 Borderline between planning activity and building activity

Theoretically, the planning system provides a clear basis for building activity in all the countries. Every building project must be in accordance with a Local plan. But in the “real world”, the planning system is young, and the municipalities are small and with limited resources. In all the countries there are municipalities with lack of such plans – and the amount of this differs between the countries.

In case the Local Plan is not worked out or is not approved, there are different procedures in the different countries, and the planning system acts differently:

1. In Estonia, the Comprehensive plans (the level above Local plans) are given a status as legally binding for building activity in rural areas. In urban areas, a developer in such cases must produce a Local plan himself, and this plan must be handled politically after the same directions for democracy in planning. Or specific design criteria can be given by local government.
2. In Latvia, there is a possibility to have Detail plans (a level below Local plans), which cover a smaller territory than the whole municipality and therefore would be less demanding to work out. These plans may be worked out on the basis of a Local plan where there is need for more detailed conditions for building activity – or if necessary: They may be worked out on the basis of a District plan. Detail plans are given the same legal status as the Local plan.
3. In Lithuania, there must be a Local plan – and if this plan is not worked out, a developer will have to do so (and pay for it), and the plan must follow the normal procedures regarding public opinion, democracy and approving process.
4. In Poland, the Mayor is in such cases given authority to decide the procedure (or outcome of an application) for an application for building permit. If he does not approve the project, the developer must work out a “Local plan”. But he may also approve directly, and

in such cases there is no public hearing for this plot. In these cases, the Mayor also defines a fee for the developer.

6.2.3 Challenges

As indicated above, the lack of plans is the major challenge in all the countries. Connected to this, the lack of capacity, competence and resources on the municipality level is a part of this challenge.

In all the three Baltic countries – and to a small extent also in Poland – there is an additional obstacle connected to the practice of the planning system. Private ownership is important, but also a young issue to handle in many cases. A developer has to prove the ownership to the construction plot, and this can sometimes be difficult. In any case, the bureaucracy has to use large resources on sorting out the ownership on plots, and this is weakening the capacity for making plans.

In addition in Estonia there is a problem if a proved owner does not agree to the purpose of a plan on his plot, and he can make the realization of the plan impossible – the author of this report does not know if this is the case also in the other countries.

B. Comparison of principals for the building legislation

7. Objects for the building legislation

7.1 Structure and content of the building legislation

The legislation has approximately the same superior goals in all the countries – to secure high quality in the built environment. But the content may have differences, and the structures of the legislation are clearly different. To get a better picture of the similarities or differences on a superior level, the main content of the sections of the Building Act is referred for each country.

7.1.1 Estonia

The scope of the Building Act is stated to provide the requirements for construction works, building materials, construction products, building design documentation, the basic for/use of/registration of construction works, and the organizing of supervision of those issues.

- The requirements for construction works are a part of the Building Act directly, and are there described as functional claims. Guidelines for “best practice” and more are available, but not as a part of the legislation.
- The provisions of the administrative procedures are taken out in a separate regulation – the “Administrative Procedure Act”, which apply to the prescriptions in the Building Act.
- The provisions of building materials and construction products are also taken out in a separate regulation. The “Product Conformity Attestation Act” is taking into account the specifications arising from this Act.

Content of the Building Act

There are 9 chapters, with altogether 102 articles (§§), each of them with a given title.

1. General provisions (§§ 1–4)

In addition to the scope of application of the Act, this chapter focuses on the construction works – the definitions, design and building, and requirements for the construction works. Obligations for guarantees are also mentioned.

2. Building material and construction product (§§ 5–11)
The chapter starts with definitions, references to other Estonian acts, EU-legislation and standards on the same issue. The chapter comprises marketing and technical approvals for new products, and claims on approval bodies.
3. Requirements for Building (§§ 12–40)
This chapter deals with all types of requirements for building, both of administrative and technical art. Administrative requirements consent “building permit”/“demolishing permit” or “written consent” including procedures for obtaining such (or not), and claims on formalities and documentation on the project to obtain such. Technical requirements consent supply of utility networks, and the responsibilities for these. Validity of building permits or written consents are also included.
4. Requirements for Undertakings (§§ 41–54)
This chapter deals with all claims on defined actors, and the duties and rights of these actors. It also consents procedures for registration of competence, to prove that the claims are fulfilled.
5. State register of Construction Works (§§ 55–58)
This deals with the duty to register construction works, and information procedures connected to this. Possible penalties for not doing so are included.
6. Construction Supervision (§§ 59–61)
This means construction supervision performed by the local governments, and includes inspection of documents, formalities, actors’ competence and organization of construction works. The chapter also deals with the competence and obligations of the officials exercising this, and the implications of a precept.
7. State Supervision (§§ 62–64)
State supervisory authority is exercised by Technical Inspectorate, and the chapter deals with their duties and rights, the claims on competence on their officials, and the implications of their precepts.
8. Liability (§§ 65–71)
This chapter deals with the proceedings and penalties connected to the variety of irregularities that can be performed, related to this law.
9. Implementing Provisions (§§ 72–102)
This chapter first states the requirements for existing construction works (basically to be the same as for new construction works). Then it defines the functions of the Building register, and information duties on construction works. The main part of the chapter deals with amendments to other legislation in Estonia, and entry into force.

7.1.2 Latvia

The scope of the Building Act is described like this: “The Law determines the mutual relations of persons participating in construction, as well as the rights and obligations thereof during the construction process and liability for the conformity of the structure which has emerged as a result of construction with the task thereof, economic liability, the intended lifetime and the relevant regulatory enactments, as well as the competence of State administrative and local government institutions in the relevant field of construction”.

- The law shall apply to all types of structures. The Law has mainly functional claims.
- “General Construction Regulations” is a more detailed document, specifying claims on construction works, design works and documentation – and is related to “Section 2” in the Building Act.

Content of the Building Act

There are 10 chapters, with altogether 42 “sections”. These are not given titles.

1. General provisions (Sections 1–3)
The chapter starts with a definition of the terms used in the law, and then the scope/purpose of the law. Then it states the general provision of building activity – the main premises and precautions.
2. Competence of State administrative and local government institutions in the field of constructions (Sections 4–7)
This chapter deals with the duties and rights of the authorities for building activity – the Ministry of Economics and a “Building Council” on the state level, and the local governments on municipality level. The chapter also specifies procedures for those bodies.
3. Regulation of construction services (Sections 8–10)
By “construction services” they specified some of the relevant fields for private actors with independent practice. The chapter states qualification claims on those actors, and their duty to document this and to be registered. The chapter also states exceptions from these claims.
4. Basic rules of construction (Sections 11–21)
This chapter deals with the requirements for building. The issues listed are first formal claims on the construction site, and the local governments’ obligation to ensure public discussion if the structure is of public importance or of great impact to neighbourhood or environment. The owner’s (client’s) obligation to have a valid building permit is stated, and also the obligation to follow prescriptions given for construction and use. The procedures connected to (technical) utility networks are focused. These networks are (most often) private,

and the law states that they may not prevent hindrances. The client's duty to do research on the building site and hold necessary permits are also stated. There are special claims for construction for State or local governments. The chapter also gives instructions for expert-examinations, in case of unsolved disputes (duty) or request from participating parties (voluntary).

5. Construction norms, standards and certification of construction products (Sections 22–25)
It is stated that the construction norms of Latvia is to be followed, and so are the relevant EU-standards and norms. The qualifications on persons participating in construction shall also comply with the requirements of Latvia and of EU. The chapter also states a manufacturer's rights and duties connected to marketing of new products (registration, certification).
6. Construction supervision (Sections 26–28)
This chapter deals with the client's rights and duties to coordinate and supervise design and construction works, and the builder's duties regarding own supervision in case of construction work for State or local governments.
7. Construction control (Sections 29–30)
In these sections are mentioned the duties of the State Construction Inspection (part of the Ministry of Economics), the rights and duties of the building inspectors on municipality level, and procedures regarding disputes or appeals connected to a construction permit.
8. Putting in order or demolition of dilapidated structures and structures in the list of cultural monuments (Section 31–32)
This chapter deals with the local authorities' mandate if a structure is dilapidated or dangerous, and also with the duties of an owner of State protected cultural monuments
9. Liability and insurance in construction (Section 33–41)
This chapter deals with the duties to be insured. The actor's duty to be insured for failures and injuries on third person, claims on the insurance, cash amount limits and losses caused by third person. Procedures in case of occurrence of insurable events or losses exceeding the liability limits are also mentioned – in line with the general procedures for insurances.
10. International agreements (Section 42)
There is an obligation to follow international agreements ratified by the Saeima. The chapter also gives directions for transitional provisions.

7.1.3 Lithuania

The scope of the Law on Construction is stated to establish the essential requirements for all construction works built, reconstructed and repaired,

the procedures for technical regulation of construction, construction investigation, design of construction works, construction, reconstruction/repair, acceptance of them as fit for use, demolition of such construction works, as well as procedures of supervision, principal activities of participants, public administration entities, owners/users, and also defines when the law shall not apply.

- The requirements for a construction are in the Law described as functional claims.
- The Law refers to national normative technical construction documents, and the Law states that these shall comply with the EU-documents and other laws of Lithuania.

Content of the Building Act

There are 12 sections, with altogether 40 articles, each of them with a given title.

1. General provisions (Art. 1–6)
In addition to purpose and scope of the Law and definition of terms used in the Law, this section focuses on the right to be a client and its implementations, essential requirements for a construction works and architectural requirements for such, and on protection of all aspects of the environment.
2. Technical regulation with respect to construction (Art. 7–9)
In this section, the basic principles for and the references to technical standards are mentioned.
3. Main areas of technical construction activities (Art. 10)
The mains areas of activities are here defined, and the rights and duties of the heads working in these fields are mentioned. The list comprises activities where theoretical technical competence is necessary. The procedures for attestation of documentation on the qualification on the heads and recognition in formal State register are also listed.
4. Participants of construction process, their duties and rights (Art. 11–18)
The participating actors are listed, and so are their rights and duties. In addition, the rights to obtain those positions are listed. Included in the list of actors are client, investigator, designer of construction works, contractor, technical supervisor, project manager, and suppliers of construction products.
5. Construction investigations. Design of a construction works (Art. 19–22)
This section comprises the basis for construction works – the design term and the documentation claims on a project. In the chapter, the procedures for approval of a construction of exceptional significance

and for construction works included in the State investment program are included.

6. A building permit. Acceptance of a construction works as Fit for use (Art. 23–24).

This section comprises all aspects connected to a building permit: when a building permit is needed (or not), and the requirements, application procedures, handling procedures and significance of a building permit or a demolishing permit. It also comprises the application and handling procedures for a Permit for use (declaration that the building is “fit for use” – or a “completion certificate”), including the significance of this document.

7. An Accident of construction works (Art. 25)

Here the term “accident” is defined, and the duties of the actors connected to a construction works in case of an accident – included the obligation to investigate the cause of the accident.

8. State regulation of construction. Supervision of construction (Art. 26–34)

Here it is stated that the State regulations shall be executed by the Government. The State supervision of construction is divided on different levels, and the tasks and duties of the levels/administration entities are defined. In addition, this section deals with the consequences of unauthorized construction, the need and procedures for an expert examination of a construction works, supervision of the execution of a project, and the obligations to inform the public of commencement of a construction works. The penalties for not following the regulations on these issues are also a part of this section.

9. Demolition of a construction works (Art. 35)

This section is listing when a building or a construction works may or shall be demolished, and procedures if a client does not do so if this is a part of a penalty reaction for irregularities.

10. Warranty period of a construction works (Art. 36)

Definitions, length of a warranty period and responsibilities for economy at incidents in the period.

11. Insurance of civil liability of the designer and the contractor of construction works (Art. 37–39)

This section states the subject matters of insurance, and demands for contracts of insurance. It also deals with compulsory insurance of civil liability of the designer of a construction works, and of the contractor.

12. Final Provisions (Art. 40)

This section states the liability for violations of the Law.

7.1.4 Poland

The scope of the Construction Law points out that it regulates the activity of designing, constructing, maintenance and demolition of building struc-

tures and specifies the principles for operation of public administration authorities in these areas.

- The Law has mainly functional claims, but also some more detailed claims.

Content of the Construction Law

There are 11 chapters, with altogether 108 articles. These are not given titles:

1. General provisions (Art. 1–11)
This chapter states what the Law does or does not regulate, and gives the definitions of terms used in the Law and in the construction sector (regarding building structures). It also states general right to develop an estate. A main focus in the chapter is claims on a building spot, and references to technical-building regulations, including the right of the Council of Ministers to determine additional conditions, and the possibilities for clients to depart from the building regulations. General claims on products and finally the rights of other ministers to determine regulations for health and safety are also included.
2. Independent technical functions in construction (Art. 12–16)
It is stated that technical functions are professional issues, and then claims for documentation on competence of actors are listed. These are specified as claims for “building licenses” on certain activities and in certain fields (including “Building expert”). The law also defines the responsibility for the Ministry to determine the types and scopes of professional preparations and educational directions.
3. The rights and duties of building process participants (Art. 17–27)
This chapter defines the main actors, and specifies the duties and the rights for those actors. The listed actors are client, competent authority, designer, construction site manager, inspector of clients’ supervision, and if needed: a coordinator.
4. Procedures preceding the commencement of construction work (Art. 28–40)
This chapter states the general and specific obligations for a building permit for all building activity or demolition, and it also states the exceptions from this. The chapter also defines the requirements to be notified as a “competent body”. Then the content of a building application, the requirements for building design, and premises for issuing a building permit are listed. The chapter also comprises appeals for Administrative Court regarding building permits, the right of the competent authority to specify conditions in the building permit, the procedures by departure from the approved design, the validity of the building permits, and the authority’s obligation to register a building permit. The chapter finally comprises some special claims connected to execu-

tion of construction works (or extermination) on structures mentioned in a register of monuments.

5. Construction and putting of building structures to use (Art. 41–60)
After a definition of a start of a building process, the chapter stakes out the obligations of the client to fulfill all requirements on both actors, plot, formalities, construction procedures and documentation of the constructions both in applications for building permits and for permits of use. The condition to be fulfilled to get a building permit and permits of use are listed, and so are the conditions if the authorities may order demolition. All obligations of the authorities during the construction period are listed, including handling procedures of building permits and permits of use. These instructions include inspections and registrations, and possible penalties if the instructions are not followed.
6. Maintenance of building structures (Art. 61–72)
This chapter focuses on existing buildings and the owner's obligation to maintain his buildings. This includes guidelines for maintenance, keeping of documentation and a maintenance log, the competent authority's mandate regarding handling of irregularities, and the client's obligation to perform actions if this is ordered by the authority. Possible penalties for not doing so are mentioned.
7. A building catastrophe (Art. 73–79)
This chapter deals with a building catastrophe, and starts with a definition of such. The relevant actors to take action are defined, especially the obligations of the competent authority of building control (on different levels), the construction site manager – and the client's obligation to carry out actions.
8. The authorities of architectural-building administration and building control (Art. 80–89)
This chapter comprises aspects of the authorities for building control and supervision on all authority levels. The duties and rights are listed for all levels, and also competence claims on and appointments of their officers. Included in the chapter is the authorities' mandates, and handling procedures.
9. Penalty provisions (Art. 90–94)
This chapter comprises possible penalties, listing the subjects to penalties due to irregularity in documents, to construction performances or to design of constructions, and the adjudication procedures connected to this.
10. A professional liability in construction (Art. 95–102)
This chapter mentions conditions claiming for independent technical professional functions in constructions, and possible penalties for persons who have caused professional liability. Then the proceedings in case of professional liability are staked out, as well as appointment

conditions and claims on the authorities connected to this, including handling of penalties.

11. Transitional and final provisions (Art. 103–108)

This chapter deals with time limits for handling procedures, and for approval of new building materials for general use, and some additional obligations on fire protection. Then prescriptions for the transitional period and relations to former construction laws are mentioned.

7.2 Obligation to apply for a building permit

In all the countries, there is an obligation to apply for a building permit for all kind of building activity and demolishing works. This includes restoring of buildings, major maintenance projects and other construction work, and also rebuilding projects where the purpose of the construction work is to change the purpose of use in the building. In all these cases, the handling procedures will follow the procedures for new buildings, and so will also all technical claims on the buildings.

However, all the countries also have exceptions from this obligation, but these exceptions are not identical. In addition, some of the countries have a graduation of their claims on the buildings, depending on the size and complexity of the building or construction.

7.2.1 Estonia

Obligation for building permit

Construction works are divided into buildings and civil engineering works (a construction which is not a building), and building permits are necessary and obligatory for both groups.

There is an exception for the building of “small construction work” (max 60 m²) or temporary construction works. In the event of building a detached house, summer-house, garden house, farm building or small construction works intended for use by the owner, it is not necessary with a building permit, and normally building design documentation is not required. But the client will have to apply for a “written consent”, where there should be listed addresses, purpose, essential technical data and more. If these basic data are not in compliance with the Local Plan, this application will be denied. If the basic data do not oppose the Local Plan, the written consent will be given.

Classification of construction works

According to the Building Act, there is no fixed classification of construction works. But when a design process starts, the authorities define

the claims on the actors, depending on the size and complexity of the construction works.

7.2.2 Latvia

Obligation for building permit

The Building Act is valid for all types of building structures. A building permit is in general necessary for all kind of construction activity. The client or the builder shall receive a construction permit in accordance with the procedures specified in the General Construction Regulations.

General Construction Regulations provide simplified procedure for receiving building permit depending on complexity of reconstruction or renovation works. A building permit shall not be required for temporary structures, a small building in a rural area and seasonal structures. But the client will have to apply for a “written consent”. If these basic data are not in compliance with the Local Plan, an application will be denied.

Classification of construction works

There is not mentioned any classification of the building structures.

7.2.3 Lithuania

Obligation for building permit

A building permit is generally needed for all kind of construction works, including for recreation and agricultural purposes.

There are exceptions for those for use of natural resources, and requirements regarding archeological and immovable cultural properties.

There are also exceptions for simple construction works – not exceeding 80 m². These do not need applications for building permits, but the authorities must have a list, which shall be approved by an institution authorized by the Government.

Classification of construction works

The Law on Construction does not mention any classification of the building structures.

7.2.4 Poland

Obligation for building permit

In general, all construction works must have building permits, and the clients must have documentation proving their right to dispose the property.

There are exceptions for some smaller building structures, like farm buildings less than 35 m² (and some other specifications), auxiliary buildings, summer houses, and general buildings less than 25 m². There are also exceptions for several other specified small building structures.

A building permit for demolition is not requested if the construction would not have needed a building permit, unless the building is entered into a register of subjects to conservation protection.

Classification of construction works

Technical claims differs with the size and complexity of buildings, and these claims are partly listed in the Law, with references to an appendix; a list of a lot of categories of building structures.

7.3 Comparison: Content, structure and objects for the building legislation

7.3.1 Content and structure of the building acts

Structure of the legislation text

The structure of the text of the legislation differs between the countries. They all have between 9 and 12 chapters, and they all have given the chapters titles. But the number of articles shows a division in two groups – from 42 (Latvia) and 40 (Lithuania) up to 102 (Estonia) and 108 (Poland). Estonia and Lithuania has given all the articles titles, while Latvia and Poland do not have titles on the articles.

This information may seem of little importance, but the accessibility to the legislation depends to some extent on such simple factors.

As a subjective comment from a foreigner to all the countries, not being a lawyer, the accessibility of the text appeared differently. The text of the building act in Lithuania was easy to understand and to maneuver into, with a logical structure, a reasonable number of articles – and all of them with a title. The text of the building act in Estonia may have almost the same characteristics, even if the number of articles were 2,5 times as many. The text of the building act in Latvia also has a logical structure, but could have been slightly easier to maneuver into if it had had titles on the articles. But the text of the building act in Poland – with 108 articles without titles – was the most difficult to use, and this impression was enforced by the “patchwork-factor” of many new articles or repealed articles within the text, and with some of the issues divided on several chapters.

Content

The content of the legislations do have many similarities, but also some differences. In general, the building acts cover the same aspects in all four countries, and that is the most important contribution to the similarity in the content. To point out the differences in focus of the content is a more difficult task, mainly because the risk for being too subjective is obvious. Based on the account of articles on the different issues, their place in the legislation – and a touch of general impression – a summary of the focus of the scope has been put together in a tabular form.

Table 14. General impression of the focus in the legislation text

	Main focus (by general impression)	"Next focus"
Estonia	Requirements for building, and for getting a building permit.	The duties and rights of some specified actors.
Latvia	Requirements for building, including claims on construction site and the duties also of authorities' officers	The systems for control and supervision
Lithuania	The duties and rights of the actors, and the procedures for getting a building permit	The system for control and supervision
Poland	The formalities, mandates of authorities, supervision and penalties.	A chapter of maintenance is of special interest.

Most of the countries have a main focus on all aspects connected to the building permit – both claims on the actors, on the project design, on the documentation, and on formalities.

But outside this, Poland differs slightly from the Baltic countries. Poland has greater focus on all aspects of the roles, mandates, duties and rights of the authorities, including specified instructions for handling procedures. Amongst the Baltic countries, Latvia has most similarities with this.

The Polish building act has a separate chapter connected to claims for maintenance, and this will be commented later.

7.3.2 *Objects for the building legislation*

In all the countries, all construction works shall be regulated by the building legislation, and the basis for all building activities (including demolition) are building permits.

However, in Estonia, in Latvia and in Lithuania there are defined exceptions for small construction works, even if the definitions of these smaller constructions are not identical. In both countries there are specified some simpler procedures, called "written consents", for such structures. This implicates that there is an obligation to inform the authorities of these small construction works in a matter that makes it possible for the authorities to object – even if a full building permit is not necessary.

Classification of the construction works is not mentioned in the building acts of Latvia and Lithuania. But in Estonia there is mentioned that claims

on the construction and on the documentation to follow an application for building permit will differ, depending on the size and complexity of the construction works – and that these conditions will be set by the authorities in an early meeting. Latvia provides simplified procedure for starting building activity depending on complexity of construction or renovation works. In Poland, the construction works may be classified in several categories – in an appendix 30 categories are mentioned – and according to the act, the technical claims will differ between those categories.

In all the countries, the technical claims are mainly given as “functional claims”, and there are references to national norms and technical standards, to EU-legislation and EU-standard, and to “best practice”. But in Poland they still have some of the technical claims directly in the building act.

In Estonia, the more detailed instructions for the administrative handling procedures for building permits are also taken out in a separate regulation, the “Administrative Procedure Act”.

In all the countries, there is an obligation to register all buildings and construction works by the authorities. There may be some minor differences in the way this shall be done.

8. Actors – Responsibilities and competence claims

8.1 Introduction and definitions

This chapter deals with the actors in the building process – their responsibilities and their possibility to perform according to this. The focus will be on following issues.

- Division of responsibility between the authorities and the private actors
- The actors' responsibility according to the law, and the clients' "helpers"

8.1.1 The actors

First a list of the main actors involved in building process, referring to responsibilities stated in the legislations (and/or to the content of this report).

Authorities:

- **Planning authorities:** This comprises all authorities making plans as referred to as plans in the planning hierarchy. But as the plans that can be used as basis for building activity mainly are plans under the responsibility of municipalities, we will refer to the municipality level here.
- **Building authorities:** This comprises the municipality authority with responsibility to handle building applications, and the following-up of the building activity.
- **Building Control/Inspectorate:** This may be a part of "the building authorities", but may also be independent offices. The systems for control and supervision will be discussed later.
- Others may be mentioned, but without having explicit roles connected to the building legislation.

Some private actors:

- **Client** means a natural or legal person who invests funds into construction and performs functions of a client (builder), or transfers such functions to any other natural or legal person.

- Developer has the functions of a client in big projects, but most often he does not invest funds himself – he will operate on behalf of an investor. And he will often also perform planning tasks, making “private local plans” connected to the projects. But versus building legislation, he will normally be the person to fulfill the client’s responsibilities.
- Investor invests funds into constructions, but do not perform the function of a client (he would normally use a developer to do so).
- Investigator means a registered enterprise which provides for activities related to investigations (researches) of a certain field, or a natural person to whom this or other laws grant the right to carry out construction or other construction-related investigations (researches).
- Designer of construction works means an enterprise, natural person or other entities, preparing a design documentation of a construction works, hired by a client.
- Manager of a construction site means a person hired by the client, to provide the co-ordination on the construction site, and sometimes also conduct the clients’ own control (or supervision).
- Contractor means an enterprise, natural person or other entities carrying out the construction work, hired by a client.

There are lots of other private actors and the list could be long. The actors mentioned above are the actors most relevant to have roles towards the building legislation. In addition, there will be mentioned more actors connected to the systems for control and supervision, in a later chapter.

8.2 Division of responsibility between the authorities and private actors

There are several similarities between the countries, and therefore the main principles for division of responsibilities are commented as a direct comparison. Most of the activities to be mentioned here are activities listed in the legislations as activities with interaction between authorities and private actors, as parts of the *early stages* of a construction work.

- Define the guidelines and design criteria and technical claims on a construction site/for a project
In all the countries, defining guidelines for building activity and technical claims on construction sites or for a project, in general are done by central governments for construction issues.

In all the countries, the design criteria and claims connected to a specific construction site are done by approval of a Local plan valid for that area. However, private actors may also produce Local plans both in

Estonia, Lithuania and Poland, and the private developers may there define the design criteria. But these private plans must be approved by the municipalities, and thus be a part of the responsibility of the local governments.

- Sorting out ownership of a construction plot
Documentation of the ownership of a construction plot is one of the needed requirements in an application for a building permit. The claim for such documentation is mentioned directly in the building acts of Lithuania and in Poland, as client's responsibility.

But private ownership to territories has a short history in modern times, and proving the ownership of plots may be a problem somewhere; the authorities are still working on this on a general level in all the four countries – and then some responsibility rests also on the authorities.

- Permits connected to technical infrastructure (transport, energy, water supply and more)
 - a) Estonia: The local governments shall provide sufficient and adequate technical networks, unless the local government and client/applicant have agreed otherwise. Owner of a plot is obliged to give space for technical infrastructure (cannot deny).
 - b) Latvia: The Building Act states that technical networks “may not prevent or hinder” a construction work. But they are most often private, and the clients will have to make a deal with the owners of the utility networks. In addition: it may occur that an owner of a plot denies letting utility networks cross his property, and in such cases, the legal basis for authorities to sort out may seem too weak.
 - c) Lithuania: The responsibilities for these structures are not mentioned directly, but indirectly, it seems as if they have a similar concept as in Estonia.
 - d) Poland: The Building Act states that building permits are needed also for technical utility networks, and that the clients' investigation duty comprises the state of the technical networks. It seems as if clients will have to make a deal with private owners of these structures, as in Latvia.

Based on these small notes, it may be concluded that technical infrastructure primarily is a responsibility of the local governments, and this is stated clearly in Estonia and almost clearly in Lithuania. But in Latvia and in Poland these structures often are undertaken by private actors, and to connect to the utility networks a client will need a contract with those private actors – the local governments responsibilities are then reduced to a supervisory function.

- Democracy/public hearings on the prospects for a project. Democracy in the planning processes is a responsibility of the local governments in all the countries. Building in accordance with local plans is also an obligation in all the countries. But public hearings or democracy processes connected to the applications of building permits for construction works differ.
 - a) Estonia: The Building Act does not mention public display of applications for building permits, but a project must be in accordance with an approved local plan (which has been on public display).
 - b) Latvia: The Building Act states that the normal procedure is that a project must be built in accordance with an approved local plan (which has been on public display). It also states that if an intended construction is a structure of public importance, if the expected costs exceed a certain amount, or if the construction will affect the environment or territories in public use, the local government must ensure a public discussion on the project prior to a decision on a building permit.
 - c) Lithuania: As for Estonia.
 - d) Poland: In principles, as for Estonia. But the local authority shall in each case verify the possession of needed opinions, and the building act comprises handling procedures for complaints. It seems as if it is a responsibility of the client to get hold of public opinion when this is needed.

Basically, the democracy is a part of the planning process and thus a responsibility of the authorities – but not an issue in the building act or in procedures for approval of building activity. There is an exception of cases of special importance in Latvia, but still on the authorities' responsibility. It seems to be an exception also in Poland, where the local authorities may claim that the client gets hold of public opinion in some cases.

- Control and supervision
In principle, there will be claims for control/supervision from both private parties and authorities. This issue will be focus in chapter 13, and not discussed here.

8.3 Competence claims and accreditation systems

All the countries have competence claims on some of the actors.

8.3.1 Estonia

Actors

Everyone has the right to be a client, and there is no qualification claims on the Client (owner).

But the client must hire a professional supervisor to perform “owner’s supervision”. This supervisor must be listed in a Central Register, the same register as designers and contractors must be listed.

The building act mentions following other activities that shall be performed by actors with competence claims (in addition to the owner’s supervision):

- to build
- to design
- to conduct investigations
- performing expert assessment of design documentation
- to evaluate construction work
- to perform project management

Competence claims

All these actors must be professional actors, and document this. Their qualifications must be in compliance with a commercial code for the relevant profession. If the actor does not have the requested qualifications, he must have a contract with a person who has those qualifications, for controlling.

When the building project concerns a public building, a separate and professional external supervisor is needed. This supervisor needs a proof/certificate from the local authorities.

There are no qualification claims on the public officers in any way. But a public officer exercising construction supervision is required to present identification when performing his or her duties, and to ensure the confidentiality of business and technical information obtained in the course of construction supervision activities, unless the disclosure of such information is prescribed by law.

Accreditation system

All the actors mentioned above (except the client) have to be listed in a State Register of Construction Works. In this register the companies are approved through persons, and the accreditation follows the persons if they change to another company. The Central Register is web-based, and is updated once a year – all persons have to apply for renewal/prolonging of their listing in the Register. The accreditation of the persons is not related to any on-going projects.

To be registered, the actors have to have documentation on their professional education, and their professional experience shall be listed, and must be verified by the authorized processor of the Register. Registering may be refused or deleted, if the given information is incorrect, or if the actor has performed irregularities in the last period.

8.3.2 *Latvia*

Actors

There are no qualification demands on the Client.

However, as in Estonia, the client holds the responsibilities for the total project towards the local authorities, and he must hire a supervisor/controller to fulfill his responsibility – and the supervisor must have a certificate to prove his qualifications and his relevant experiences for the actual work. This supervisor can be a company (not necessarily a person).

In the Building Act, following actors are mentioned with competence claims:

- Engineering research
- Design
- Construction expert-examination
- Construction works management
- Construction supervision

Contractor (client) should have 2 supervisors for each project: a construction supervisor responsible for the application and the “public claims” in the project, and a construction manager responsible for correct building. In some cases there could also be a person responsible for supervision of design performance.

Competence claims

All these actors must have Certificates, proving that they are professional actors. This is necessary for all actors, all professions and for all types of constructions; regarding design, supervision, contractors, the technical structures in the buildings, technical installations, and more.

There may be severe qualification claims on the actors to get those certificates. Certifications on actors last for 5 years, and they are held by physical persons (not companies), and the certificates follow the person if he changes employer. The certificates are general documents on the persons, and the persons do not need to have separate certifications for each project. To prolong a certificate, the authorities evaluate the work done by the actor in the last period – the certification bodies then check if there are complaints, registered irregularities and so on.

These will be a central part of an application for a building permit, as the local authorities shall approve them as a part of the application handling process.

Construction companies must be listed in the Construction Merchant register.

Until 2005, also the contractors were obliged to have a license to carry out construction work, but this is not needed any more. The Construction Merchant Register is not in any way an approval for qualifications – it is just a list of information about the company. The information in this Register is available on internet, and is to be updated once a year. The authorities plan to open a new Register in 2011, and this should be a more open register for companies, with more information than the present system.

There are no qualification claims on the public officers in any way.

Accreditation system

Competence certificates of civil engineers and designers are registered in a register for professional certificates (the Profession Register) based on their formal qualifications, and the certificates are valid 5 years and must then be renewed.

8.3.3 Lithuania

Actors

Everyone has the right to be a client, but the client must prove his ownership to the construction plot. There are no qualification demands on the client.

In the building act, following actors are mentioned with competence claims:

- Investigator
- Designer
- Contractor
- Technical supervisor
- Supplier

Competence claims

There are no qualification claims on the client. But according to the law, he has to be the owner of the construction plot (and prove this), and he is obliged to have a building permit where this is required.

The documentation of the ownership includes an agreement of co-owners, and a record of public discussion of owners in cases of multi-family apartment houses. He is also obligated to hire competent actors on

both design process and construction works, and he must hire a controller for each project.

There are competence claims on the design work in all building projects; there has to be qualified architects on all types of projects, except for own single-family houses in a district areas.

Construction companies must be registered with the qualification on the actors, and this has to be updated every 5th year (but so far, they have not had capacity to follow this up and check if the certificate is older than that). To prolong a certificate, they have to give a new list over persons/qualifications, and a list over the actual activity the last years, but it will most often be a much more easy process to get a prolonging of a certificate than to get the first one. However, it is possible to lose the certification, if there have been complaints on the actors and they are proved to have made serious errors.

There are qualification claims on all actors, but by law the qualification claims are on the heads (of the participating actors' companies/entities) working in the main areas of technical construction activities. The qualifications must have attestation by an institution authorized by the Government.

More specific; the main areas of technical construction activities may be directed only by heads who have undergone attestation (heads of design of a construction works, heads of the parts of a design documentation of a construction works, heads of supervision of the implementation of a design documentation of a construction works and its parts, heads of the construction and heads of special works related to the construction, heads of technical supervision of construction (heads of general technical supervision and heads of special technical supervision), heads of expert examination of a design documentation of a construction works or its parts, heads of expert examination of a construction works).

There are also claims on the actors to have appropriate insurances on their own work.

Foreign architects must have documents confirming their qualifications recognized in Lithuania by the same institution. Foreign companies must follow the same system as the Lithuanian, deliver the same documentation, and they also have to be registered in the Lithuanian register/have a valid certificate in the country.

Accreditation systems

There is no State central register for the attestations required.

But there are voluntary associated organizations, as Builders Association, Designers Associations, Architects Associations and etc. They have certification systems on both architects and construction companies, and these are rather differentiated and detailed, and differ on several levels of

competence. There is a central register for these certification systems, and this register is open for public insight.

The list of specialists, who have undergone attestation of qualification, which is voluntary, is published in Lithuanian Official Journal “Valstybes Žinios”. Additionally such data is located on the web page of the responsible body - www.spsc.lt (English version - CCBP – Certification Center of Building Products)

8.3.4 Poland

Actors

Everyone has the right to be a client, but the client must prove his ownership to the construction plot. There are no qualification demands on the client.

In the building act, following actors are mentioned with competence claims:

- Design activity
- Managing construction works

Competence claims

The technical solutions and architectural design (including clients’ supervision) are matters of professions, and can be executed only by persons with appropriate technical education and professional experience suitable for type and complexity level of the activity. The actors must have a “Building license” to document this, and with such licenses they may also perform supervision.

For design activity, it is stated that “the actors must have appropriate qualifications for their role in the project”, which means that their responsibility and role in the project must be clarified, and an architect must have a license to have design responsibility.

The claims for qualifications are not mentioned directly in the Building Act. These claims were a part of the Building Act before, but not anymore – they are now taken out – but the practice is still as if this was a part of the law.

The authorities claim to approve the qualifications for two persons in every project:

- An Architect with responsibility for the architectural design
- An Architect with responsibility for supervision of the former’s work (a controller)

There are qualification claims for the leader of the construction company, and this leader must have a certificate listing up his qualifications. This

certificate is personal, and does not follow the company. When the authorities evaluate the qualifications of the leader of a construction company, they will relate these to the complexity and size of the construction project.

There are no qualification claims on public officers.

Accreditation system

The authorities keep a Central License Register, especially for design competence. The building act also states that the authorities shall have a list where all types of education is compared, and harmonized with educations in other countries.

The architects' qualifications must be listed in this Register, and the architects must also sign for membership in the organization for the architect profession. The license and membership are personal – the claim for qualifications is related to the architects in person, not to the office. The architects do not have to send documentation for their qualifications for every project, when their qualifications are listed, the authorities mainly check the register.

A comment: There is a possibility to be taken off the register, if they have not been fulfilling their responsibility in a proper way in a former project. But the fee for keeping the license and membership in the “professional organization” is high, and the architects are only members as long as they pay the annual fee (which is personal) – this may be a much more common cause for not maintaining the license and membership.

8.4 The responsibilities of the private actors

The legislations mention several private actors with responsibility according to the building acts, but these actors are not the same in all the countries, and their responsibilities may differ.

First, the mentioned actors in each country will be listed, and then the focus on the responsibilities for the mentioned actors will be discussed. There will be a special focus on the client's role, especially if his responsibilities may seem to be covered also by other actors.

The clients have the superior responsibility in all the countries, and in general this comprises:

- to have a valid building permit (or a written consent) before construction works starts,
- to see that the construction is built in compliance with the conditions given in the building permits,
- to secure access from authorities for control and supervision at any time,

- provide the necessary documentation on the building – both in application and “as-built”,
- provide expert assessment on the building design documentation when necessary,
- that the construction works are performed by a person with necessary competence,
- maintenance of and safety to the surroundings,
- to have a permit for use before using the building,
- that the use is in accordance with the approved conditions,
- to organize owner’s supervision during the construction period,
- several other minor obligations in line with the ones mentioned.

8.4.1 Estonia

In principle, the client has the complete responsibility towards the authorities, and all the other actors are undertakings.

According to the building act, the client (owner) is required to guarantee the issues mentioned in the introduction, and in the legislation, the obligation to hire an owner’s supervisor is focused. However, the client does not have responsibility for the competence on the actors for design activity – this is their own responsibility.

The client may hire building contractors, project management and so on – but if they fail, he may do it himself, and he then has the right of recourse from them for the costs.

8.4.2 Latvia

The Client has the superior responsibility for the whole building process, but this is not mentioned directly in the Building Act, and is therefore not specified - he does not have a fixed responsibility. But his superior responsibility seems to include the responsibility for hiring qualified persons with licenses to do the qualified work.

The actors with certificates have the responsibility for their own work towards the authorities.

They have to follow procedures for changes in the project, and are responsible for reporting those changes. The Building Inspectorate will have random checks on the building sites as a part of their supervision tasks.

The contractor shall have his own supervision in case of construction works for State or local governments.

8.4.3 Lithuania

The client has to hire competent actors on both design process and construction works, and he must hire a controller for each project. The archi-

tect offices and construction companies have responsibility towards the authorities to follow the complete legislation.

The law states the musts and rights of the client, and the claims on all other actors in § 12–18.

Head of design of a construction works shall represent the interests of the client, and (in a manner prescribed by normative technical construction documents) organize preparation of a design documentation of a construction works, co-ordinate solutions of the parts of a design documentation of a construction works, supervise and be responsible for the implementation in a design documentation according to the legislation.

Head of construction of a construction works shall represent the contractor (or the client, in the case of self-dependent construction), and implement a design documentation of a construction works from the beginning of construction to the acceptance of the construction works as fit for use. He will be the head of general construction operations, and, within his competence, he is responsible for the standard quality of the built construction works.

Technical supervisor of construction of a construction works represents the client, and perform general supervision and co-ordinates special supervision, and, within his competence, is responsible for the standard quality of the built construction works.

In principle, all other actors (than the client) must perform in accordance with normative standards for their professions, and follow instruction for health and safety. They have direct responsibility for the quality of their work towards the authorities. Designers have the right to instruct other actors in certain cases, but most often he must ask the client to do so.

8.4.4 Poland

The Client (the Investor) has the financial responsibility, and he is also to define the project. But he has no direct responsibility towards the authorities regarding the design or technical solutions.

The client's duties include arrangement of the building process, taking into account the principles of safety and health protection, and that the building or construction will fulfill the requirements. The client also has the responsibility of hiring actors with appropriate professional qualifications, adequate education and certificates.

This duty of the client comprises appointment of inspector of "owner supervision", and this function must be separated from the function of a construction site manager – a combination of those two functions is not allowed. The architectural design has to be in accordance with the approved Local Plan – and if this plan is lacking, the architectural design has to be in accordance with the guidelines given by the Mayor. The responsibility of the supervisor is mainly to guarantee that so is the case.

The financial responsibility of the client includes decisions and priorities if the costs are to be reduced or project is to be changed in any way. If the changes are of major character, the authorities have to accept the changes – and the supervisor has to see that the project is still fulfilling the guidelines given by a plan or by the Mayor.

In principle, all actors except the client are undertakings.

8.5 Comparison: Actors – Responsibilities and competence claims

8.5.1 Division of responsibility between the authorities and private actors

In principle, the division of responsibilities between authorities and the private parties regarding early stages of construction works are rather similar in the four countries, in following aspects:

- The authorities perform the formal basis for building and the design for a construction site, through a local plan.
- The conditions authorities have the responsibility for democracy processes in planning.
- Democracy processes are not a part of the building legislation for handling procedures to obtain building permits (except for in special cases in Latvia, and when the local authorities decides so in Poland)
- Clients must follow the guidelines and design criteria given in local plans, and the authorities shall check that so is done.

A client must prove his ownership to the actual construction plot (at least in Lithuania and Poland).

Technical infrastructure is a responsibility of the local governments in Estonia and in Lithuania, but this is mainly on private actors in Latvia and Poland – even if the authorities shall supervise this.

8.5.2 Responsibilities, competence claims and accreditation systems

Table 15. Actors according to the building acts, and competence claims on them

	Actors with competence claims	Competence claims
Estonia	Client (owner) Build Design Conduct investigations Owner supervision Expert assessment of design documentation Evaluate construction work Project management	None Qualification in accordance with a commercial code A registration in register of economic activities If he does not have the requested qualification, he must have a contract with a person who has, for controlling
Latvia	Client Engineering research Design Construction expert-examination Construction works management Construction supervision	None Profession certificates (valid 5 years) must be registered (design) Merchants: Registered in (construction) merchant register
Lithuania	Client Investigator Designer Contractor Technical supervisor Supplier	None (prove ownership to the plot) The said heads must meet the approved qualification requirements Their qualifications must have attestation by an institution authorized by the Government
Poland	Client Design activity Managing construction works	None (prove ownership to the plot) Must have a building license

Table 16. Competence claims and accreditation systems

	Competence claims (simplified)	Accreditation systems
Estonia	Qualification in accordance with a commercial code A registration in register of economic activities	State Register of Construction Works. Accreditation of persons with attested qualifications. Merchant Register
Latvia	Profession certificates must be registered (design and civil engineers) Merchants: Registered in (construction) merchant register	Professional Register; certificates on persons qualifications for design and civil engineers
Lithuania	The said heads must meet the approved qualification requirements Their qualifications must have attestation by an institution authorized by the Government	No central state register Certification systems by voluntary building trade organizations.
Poland	Must have a building license	Central License Register for design activities. Membership in trade organizations

Table 17. Actors according to the building acts and their responsibilities

	Actors (according to law)	Main responsibilities on the actors
Estonia	Client (owner) All other actors	Responsible. (§ 29). Undertakings.
Latvia	Client (owner) All other actors	Responsible, but not mentioned directly (Undertakings) The builder shall have own supervision in case of work for State/local governments
Lithuania	Client (owner) All other actors	Responsible (§ 12). Must prove ownership. They act on instruction of the client (undertakings). They must perform in accordance with normative standards for their professions. They have direct responsibility for quality
Poland	Client (owner) Inspector of client's supervision. Designer. Construction site manager	Responsible (§ 18). Must prove ownership. Undertakings. In principle, the same responsibility as in Lithuania.

We see from these tables that the client is the responsible part in a construction works, towards the authorities, in all the countries. But there are some minor differences in his responsibilities:

- In general, the superior responsibility of the client is stated directly and clearly in the legislation text – but not in Latvia, even if the client also there has to ensure that the building process is carried out in accordance with all requirements.
- In general, the client has the responsibility to hire actors with relevant and sufficient qualifications – but not in Estonia, where the obligation to fulfill qualification claims rests on the actors themselves.
- In general, the client is responsible for design and technical solution (towards the authorities) – but not in Poland, where the client does not account for these factors. The responsibility for this rests on the actors (designers).
- In Lithuania, the clients responsibility is the most complete, and without exceptions.

In general, there are qualification claims on all actors. In Lithuania and in Poland, these qualification claims are laid on the heads of the involved companies – with focus on designers, owner supervisors, and construction site managers.

In general, there are central State Registers to help securing that the competence claims on the actors are fulfilled – but not in Lithuania, where this is voluntary and kept by voluntary trade organizations.

As a summary, there can be concluded that in Poland, the legislation places the responsibility for the actors' competence on the client, but the authorities still have State Registers and supervise the competence of the actors in each construction works – a kind of double security on this issue.

In Latvia, it is the same situation, but not so clear, since the client's responsibility is not so clearly defined in the act.

In Estonia and Lithuania, the responsibility for the actor's competence is placed only one place:

In Lithuania, this is by the client, and then the authorities not even keep a central state register.

In Estonia, it is not a responsibility of the client, and the authorities then must control this – and they then must have a Central State Register.

9. Building structures –Building permits and quality systems

This chapter deals with the qualities in building structure and construction works, and the chosen tools and systems to obtain this. The most important factor in new construction works is the significance of the Building permit and the Permit for use. But for quality in built environment, we also have to consider other factors – like accessibility, aesthetics, environmental qualities, and maintenance of the construction works. In the chapter, there is also a focus on the way these matters are taken care of in the legislation.

For Building permits and Permits for use, this chapter is not focusing on the handling procedures.

The focus is placed on the significance of those documents; how important they are to act in the marked, and the implications if these documents are not in proper condition.

9.1 Significance of a Building permit and a Permit for use

9.1.1 Building permit

In all the countries, the Building permit (or written consent/notification for smaller construction works) is the legal basis for all construction activity, including demolishing. Without a Building permit, a construction works is considered to be illegal building activity, and some penalty reactions may be or will be executed.

The Building permit is a “contract” between the client and the authorities, and thus gives the conditions for the design, technical claims and purpose of the construction works. Penalty reactions may be or will be executed also if the building activity departs from the documentation given in the application and approval of the Building permit.

The significance of the Building permit is high in all the four countries, and the basic principles are the same in all the four countries. For this reason, the significance of a Building permit is given minor focus in a comparison – even if this is one of the most important aspects in the building legislation.

9.1.2 Permit for use

The Permit for use is a document where the local government confirms that the construction works is completed and in order, and that it is performed in accordance with the conditions given in the Building permit. The client must apply for a Permit for use, and give necessary documentation on the completed construction. Formally this is the same in all the four countries.

But the significance of this document may differ between the countries.

Estonia

The Permit for use is an important document, because (formally) it is necessary to have this document to get the building insured, and to get electricity and water on a permanent basis.

Buildings for workplaces will suffer severe consequences for the workplaces if the buildings are not registered as legal buildings, so they will always have the permits for use, and proper insurance.

Still: In real life only half of the building permits have ended up with permits for use. The buildings without permits for use are mainly dwellings, and the high number of formally “not finished” living houses may be explained by a slightly liberal practice: Building is expensive, so fundraising over a short period may be a problem, and they try to do some of the work themselves (with rather slow progression). The level of property taxes is also very high, and there are no property taxes on a construction site, so there are few incitements to finish the house. And it is not difficult to get formal permission to prolong the building period and thus get prolonging of the period with “construction electricity and water supply”. And the insurance companies are often willing to sign for insurance as long as the client pays for it, even if there is no Permit for use.

Latvia

The significance of the Permit for use (Completion Certificate) is high. The Completion Certificate is necessary to register the new property, and then for sale of the property. It is also necessary to have this document before the building can be used legally – that means that all buildings for workplaces/professional use must have this certificate to run their business legally.

The Building Inspectorate check the building site just before the project is to be finished, as a part of the procedures for issuing Completion Certificate.

Then; today it is possible to blame the authorities if they have approved a building with severe faults. In grave cases this can end up in court, and the authorities may pay large compensations. This may be a problem – especially as the building site inspections is just a visual check.

The Inspectorate can ask for an expert (paid by the client) if they suspect some kind of “disorder”.

Lithuania

The Permit for use (Completion Certificate) is of rather high significance. This document confirms that the building has been set up in accordance with the requirements of the mandatory documents.

Until this certificate is issued, the client is legally only an owner of a construction site. He may not register the building as a legal property, and then purchase of the building is not possible.

With a Completion Certificate, the building can be registered as Im-movable Property (according with the Law on the Register of Immoveable Property).

Theoretically, it should also not be possible to insure the building without a Completion Certificate, but the insurance companies are not so rigid as long as the client pays.

Poland

The Permit for use (Completion Certificate) is theoretically of high im-portance also in Poland.

It is not legally possible to use the building until the completion cer-tificate is issued. The Completion Certificate also proves that the building is completed and in order, and that the client is the legal owner of the building – and the building may be purchased.

The handling period of the authorities for issuing this certificate is 3 weeks according to the regulations for handling procedures, but this may take much longer time – up to several months. It then happens that the client start using the building before the Permit for use is in order.

9.2 Quality in built environment

Quality in built environment deals with more than the technical solutions for the building. Other important factors that may be given attention in a building legislation are: Accessibility for disabled people, aesthetic di-mensions, environmental qualities, maintenance of construction works (repairing of errors and damages, and prevention of dilapidation).

9.2.1 Estonia

In general terms, the Building Act states that the client has responsibility to secure a high quality of the construction works, in accordance with all technical standards.

But the other factors mentioned above, are not mentioned especially in the Building Act.

Aspects related to security and health of workers is not a part of the construction law either, as this is a part of other legislation, concerning workers' conditions.

Maintenance of buildings is not an issue in the Building Act, as this is considered to be the clients' responsibility, and for the clients' own interest.

9.2.2 Latvia

The Building Act states that the government has an obligation to produce a strategy for obtaining quality – both by education and training of professional actors (architects, engineers, workers and more) and by other means/regulations.

In general terms, the Building Act also states that the client has responsibility to secure a high quality of the construction works, in accordance with all technical standards.

Accessibility for disabled is mentioned (§ 8), where it is stated that the Ministry of Economics shall monitor and control compliance with requirements for the accessibility of the environment in public buildings and structures.

Aesthetic qualities are handled by giving the designer (author) some authority in these matters. The client has the right, and in some cases the duty, to invite the author of design (the architect) to supervise the construction work. The client shall also consult the architect if he makes changes in the design, and the author (architect) has a duty to perform supervision in the cases specified in the General Construction Regulations.

A construction carried out for the State or by local governments' funds, must have a building supervisor for quality of construction work, but this supervisor does not have the right to make changes in the building design – this supervision may be performed by a representative of the credit bank or insurance company.

Environmental qualities are including protection of cultural heritage. Buildings older than 50 years are regarded as “protected”, and the Ministry of Culture has a mandate for supervision. There are rules for frequently inspection of those buildings, and the State Building Inspectorate may carry out this on behalf of the ministry.

The Building Act is not very specific on the issue of maintenance. The Building Act or any other State level documents do not give guidelines or have any claims concerning maintenance of buildings, but the local authorities (municipality level) may adopt local guidelines for maintenance.

9.2.3 Lithuania

In general terms, the Construction Law states that the client has responsibility to secure a high quality of the construction works, in accordance with all technical standards.

Design conditions shall be drawn up by the municipal mayor within 10 days of the reception of an application – and there shall be design conditions also for simple constructions, where a building permit is not necessary. Architects must be the head of the design processes, and for residential buildings also the head of the project.

The general attitude for an evaluation on design work, is that matters of aesthetic qualities should be judged by people with special knowledge on aesthetic – most often that means the chief architect in the municipality section for building permits – and not by a group of politicians. The law does not give specific instruction on this matter.

The informants for this report informed that they want to have a stricter regime about aesthetical matters, but until now they do not have sufficient “tools” to practice a strict control on this issue.

Concerning major faults the Construction Law comprises a separate chapter on procedures for handling an accident of a construction work.

Accessibility, environmental qualities and health & security aspects are not mentioned directly in the building legislation text, but all these issues are covered by other legislation – they are not mentioned here because an issue shall only be regulated in one place by the legislation.

9.2.4 Poland

In general terms, the Construction Law states that the client has responsibility to secure a high quality of the construction works, in accordance with all technical standards.

Accessibility for disabled is mentioned in § 9, where it is stated that the built environment must not cause any limitations for disabled people, in sites where there shall be public access.

Aesthetic qualities are handled by giving the designer (author) some authority in these matters.

In § 21 it is mentioned that the designer has the right to admittance to a construction site and to the building log, and to suspend execution of construction works if he discovers departures from the accepted design. The client may also oblige the designer to perform author’s supervision, and this may as well be a claim from the authorities.

The Construction Law has a separate chapter (6) only concerning maintenance. The owner or administrator of a building structure is obliged to maintain and use a building structure in accordance with its intention, and the documentation for maintenance is a part of the documentation for a Completion Certificate. This obligation is lately strength-

ened for security issues (fire, gas, electricity), and there will be inspections by the authorities at least every 5 year periodically.

The owner or administrator is also obliged to keep a building structure book, which is a document intended for the Inspectorate to see a “log” over major repairs, periodically maintenance works and more. The competent authority may forbid use of the building, if irregularities are discovered, until these are removed.

The Construction Law also comprises a separate chapter (7) on procedures for handling an accident of a construction works.

9.3 Comparison: Building structures – Building permits and quality systems

9.3.1 Significance of Building permits and a Permits for use

Regarding Building permits, there are not any significant differences between the countries – a Building permit is a document of high importance in all the four countries.

The Permit for use – or Completion certificate – has in principle and theoretically also the same significance in all the four countries. But in practice there are differences, and these differences are put together in a tabular form.

Table 18. Differences in the significance of a Completion Certificate

	Significance of Completion Certificate	Moderations in practice
Estonia	To use the building To get electricity and water permanent To get the building insured To have legal workplaces	Half of the new dwellings do not have CC, mostly due to tax policy and the possibility to prolong the construction period. And insurance companies insure as long as client pays.
Latvia	To use the building To register the building (and sale) To have legal workplaces	
Lithuania	To use the building Confirms a property (for sale) To get the building insured.	Insurance companies insure as long as client pays.
Poland	To use the building Confirms the property (for sale)	Buildings may be used before CC, because of long handling period.

Mainly, the significances of a Completion Certificate represent different aspects of the main purpose of making the building a legal property for use and sale. But as pointed out in the table, there are some differences between the countries in this formal significance.

In addition to the main purpose, are mentioned:

- To get the building insured is a purpose in Estonia and Lithuania

- To get electricity and water on a permanent basis is a purpose in Estonia.

But in all the countries (except Latvia) there are moderations in practice, which in reality makes the significance of the Completion Certificate less important. In the countries where this document should be the basis for insurance, the insurance companies insure anyway as long as the client pays. The possibility to use the buildings without the certificate is obviously present. And in Estonia it seems as if there are few economical incitements to complete the construction works and obtain the Completion Certificate.

9.3.2 Quality in built environment

To obtain and secure high quality in the build environment is one of the major purposes of the building legislation in all the countries. Here, some “less measurable” factors are commented; accessibility, aesthetics, environmental protection and maintenance. These factors may be regarded as “soft obligations” in all the countries, but the focus here is to see if the legislation text has separate articles or specific instructions for the issues. The information given above is put together in a tabular form.

Table19. Specific formulations in the legislation, regarding Quality in built environment

	Accessibility	Aesthetics	Environment	Maintenance
Estonia	-	-	-	-(Client's interest)
Latvia	Requirements. Ministry shall monitor/control	Designers given some more authority	A focus on protection of cultural heritage	Loc.gov. may adopt guidelines
Lithuania	Covered by other legislation	Increased focus. Obligations to use architects.	Covered by other legislation	-
Poland	Built environment must not cause limitations	Designers given some more authority	-	Maintenance in a separate chapter

We see that Estonia and partly Lithuania are not specific in the legislation text on those issues, even if Lithuania expresses an interest for increased focus on aesthetics. In Estonia, these factors were more precisely regarded as a matter of the clients’ priorities – and maintenance also a matter of the clients’ own economical interest. But in Lithuania, most of these factors are covered by other legislation, and to avoid unclear legislation and responsibilities, they do not want to have the same topic covered several placed.

We also see that Latvia has given these aspects much attention, and the factors are all handled in separate articles. These articles do not provide concrete descriptions or instructions, but state a general focus and

thus give a legal basis for more detailed instructions in other types of documents.

In Poland, accessibility and aesthetics are given the same type of attention as in Latvia. But in addition, there is a separate chapter of maintenance, and this chapter is giving rather detailed instructions both for obligations, frequencies, documentation and inspections connected to maintenance. The legislation tools chosen in this chapter (especially the documentation claims) differ distinctively from the other countries, and may be of special interest.

As another aspect of quality in built environment, major faults and errors may lead to accidents/catastrophes. It must be mentioned that handling procedures of such catastrophes are given attention in separate chapters in both Lithuania and in Poland.

On a more superior level, the differences in handling the “soft obligation factors” in the countries may be an expression of views on the responsibilities for these kinds of issues. In Estonia this may be regarded as responsibilities of private actors, in Lithuania these issues are covered by other legislation, while this in Latvia and in Poland to a certain extent more is regarded as a part of the responsibility of the building authorities – at least to supervise these factors.

10. Control and supervision

10.1 The situation in each country

Control and supervision are given a wide attention in all the countries, and are some of the basic issues of the legislations. First, we give a picture of the situation in each country.

10.1.1 Estonia

The system for control and supervision is based on three pillars:

- State supervision (performed by the Technical Inspectorate, state level)
- Construction supervision (performed by local governments)
- Owner supervision (performed by person paid by the client)

State supervision

State supervisory authority shall be exercised by the Technical Inspectorate.

The Technical Inspectorate has the right to exercise supervision without hindrance and without giving prior notice and obtain information necessary for state supervision whenever they want, and where they want, without hindrance.

The Technical Inspectorate may perform inspections of construction works, building design documentation, and construction products and of undertakings, order expert assessment to verify conformity to requirements, and conduct investigations into reasons for accidents relating to construction works. They also have mandate to issue precepts.

The Technical Inspectorate shall inform the local government of the results of state supervision.

The Inspectorate for Technical Supervision also has the responsibility for “owner supervision” of construction works carried out on behalf of state or local governments – in such cases they both perform the control and the supervision to see that the control is properly done

Construction supervision

Construction supervision is performed by the local governments (municipalities), performing the main part of the supervisory duties of the authorities.

The Construction supervision has the authority to issue building permits, and to do so they conduct inspection of the design documentation to

check compliance with the requirements given by Local plans, design criteria given by the Mayor, or other requirements. They also inspect if the claims on actors are fulfilled.

The Construction supervision also has the mandate to issue permits for use (Completion certificates), and to do so they conduct inspection of construction works on site, of actors and of the design documentation.

Officers exercising construction supervision shall without hindrance have access to all necessary documents, information, construction sites and building logs whenever he wants, and have the right to monitor the construction works and order expert assessment of building design. He also has the competence to issue precepts if irregularities are discovered.

If he orders expert assessment, the costs for this shall be covered by the authorities, but if irregularities are discovered, the authorities may charge the client for these costs.

Performance of construction supervision demands technical qualifications, and the officer is obliged to present identification when performing his duties, and he must ensure confidentiality of business and technical information.

Owner supervision

Before building commences, the client shall authorize a person to exercise owner supervision (unless the construction work is small and just require a written consent, or involves national security). The person to exercise owner supervision shall not be the same person building the construction works.

The objective of owner supervision is to ensure that the building will be in compliance with the building design documentation, and he is responsible for preparing the technical construction documentation and secure the requisite quality of the construction work.

Owner supervision shall be conducted from the time that building of the construction works commences until a permit for use of the construction works is obtained.

The owner supervisor shall inspect the conformity of the building documentation with the requirements, and verify that the construction perform in compliance with the building documentation. He shall also verify that environmental safety and workers health and safety are ensured. In case of lack of such conformities, the owner supervisor has the mandate to demand that building documents or construction works are re-performed and brought into order.

The qualification claims on an owner supervisor are similar to the responsible actors: he must have registration and documentation on his professional skills, and be listed in the merchant register. The procedure for exercising owner supervision shall be established by the Minister of Economic Affairs and Communications.

10.1.2 Latvia

In principle, control and supervision by law are performed by the state authorities, in two levels:

- State supervision (performed by the State Building Inspectorate, state level)
- Construction supervision (performed by Local Building Inspectorates)

The two levels of supervisory functions are organised as an independent state institution, with duties on two levels – central and local level. The central functions are carried out by the State Building Inspectorate, while the local functions are performed by ca 150 Local Building Inspectorates (while there are 556 municipalities).

State supervision

The State Building Inspectorate supervises the activities of the Local Building Inspectorates. The State Building Inspectorate is also checking all building documentation on projects – both the documentation on the actors, and the documentation on the project.

Their main duties are to secure that the construction works will be performed in compliance with the approved design and with the Latvian Building Codes. They may also supervise the building sites.

In addition, the State Building Inspectorate has the role as “Building Supervisor” for public buildings, on behalf of the local authorities when they act as clients.

The State Building Inspectorate may also supervise the activities of the Local Building Inspectorates.

Construction supervision

The Local Building Inspectorates are dealing directly with all the building projects.

The Local Building Inspectorates are not issuing building permits. This is done by the Local governments (municipalities), based on design criteria given in the Local plans.

The Local Building Inspectorates main duties are to insure that the construction works are carried out in accordance with the requirements given in the building permits, and with a technical standard in accordance with norms and regulations. They also issue the Completion certificates.

To do so, the Local Inspectors may perform inspections of construction works, building design documentation to verify the compliance with

the design criteria, and order expert assessment to verify this conformity. They also have mandate to issue precepts.

Normally, they perform two building site inspections in every construction work: They check the building site in the very early stage/by starting, and they check by finishing with the purpose to issue the completion certificate. For some projects they also have a midterm inspection.

Other supervision

Owner supervision is not requested according to the Building Act. But the client has the right – and in some cases the duty – to invite the designer to perform supervision. The client and builder also have the duty to co-ordinate all changes in the construction design with the author (designer). And the designer then has the duty to perform such supervision if requested.

If construction is carried out for State or local government funds, the builder must engage a building supervisor for supervision of quality of construction work and products.

Supervision of construction, if this is included in contracts between participating parties, may be performed by a representative of the credit bank or insurance company.

Expert-examination of a construction shall be organized if a dispute issue between the participants in construction work is to be resolved, as well as on the basis of a proposal by a commissioning party or building authority.

10.1.3 Lithuania

In principle, there are three levels of control and supervision:

- State supervision (performed by the Building Inspectorate, state level)
- Construction supervision (performed by Building Inspectorate, county level)
- Owner supervision (performed by person paid by the client)

The Building Inspectorate is a State institution, operating on two levels: on national level, and on county level. In Lithuania, there are no building supervisory functions on the municipality level.

State supervision

The State Building Inspectorate is primarily making the guidelines and they provide help in methodical matter. They also may perform supervision – both on the county level of inspection and in special building cases.

The State Building Inspectorate is also handling complaints (in complicated or special cases).

In addition, the State Building Inspectorate is carrying out the Public Client role (being clients for public buildings like schools, hospitals etc.). In these cases they also must focus on the use of public money – control, procedures and amount.

The State Building Inspectorate also gives guidelines for and supervises the systems for health and security on construction sites. In addition, they provide supervision of special technical interest, such as energy efficiency and more, related to environmental issues.

The procedures for owner technical supervision of the construction shall by law be established by an institution authorized by the Government.

Construction supervision

The Building Inspectorates on the county level are the “first line” of authorities’ supervision. The county level of the Building Inspectorate has their mandate delegated from the state level, and act on their behalf. Their duties are regarded as strictly administrative matters, and politicians are not involved in the handling of cases.

The Building Inspectorates issue building permits. To approve an application for a building permit, they mainly check if the design documentation on the project is in accordance with the design criteria given in the Local plan – and an approved local plan is mandatory. They do not check the technical content/quality – they rely on the clients’ documentation on the project. Nor do they check the competence on the actors, unless they are in doubt if the actors have sufficient competence, because this is a responsibility of the client. But they have a possibility and option to hire expert-examination in difficult matters.

The Building Inspectorates also issue completion certificates. To do so, they primarily perform a control of the documentation on the projects, to secure that the projects are completed in accordance with the requirements.

The Building Inspectorate also may have inspections on the building sites, but this is most often done as “supervision”, not actual technical control.

Owner supervision

The Construction Law states that the client must organize supervision of the execution of a project, when this is mandatory or on his own initiative. He must have a design supervisor for the design works, and a technical supervisor for the construction works.

Mainly, the system is based on controlling responsibility on the client, and this is also in the interest of the client. All documentation of the construction work shall be sent to the Building Inspectorate, and they claim

that every issue of technical design matters shall be documented and signed for by two architects – the designer and a controller (or supervisor).

If the client is a legal person, he shall appoint one of his employees or hire an independent expert to perform a technical supervision of his construction work. If the client is a natural person, he shall hire a technical supervisor of construction of a construction works under an employment contract.

The technical supervisor must monitor the compliance with the design documentation of a construction work and the construction work, check the quality of construction work and products inclusive the hidden parts thereof. He shall also prepare the as-built documentation, proving that the building is fit for use for the accepted purpose.

The technical supervisor may demand that the contractor corrects any violations on the design documentation of a construction work, normative technical standards, or irregularities concerning health and security – he may even suspend the contractor if there is a threat to the environments.

The technical supervisor of construction of a construction works shall, for non-performance of his duties or improper performance of such duties, be held liable under the Civil Code and the Code of Administrative Offence.

Other supervision

Expert examination of projects and construction works shall be performed in case of projects of exceptional significance, and is mandatory if the project is included in the State investment program.

Comments

In a theoretical manner, the client has the complete responsibility. But there may be a lack of competence in the market, and there has been promoted a proposition where the designers must have a supervisory expertise to carry out this check – as an enforcement of the actors' quality systems.

10.1.4 Poland

In principle, control and supervision by law are performed by the state authorities, on three administrative levels, and by two authorities on each level:

- National level
- Province level (voivodship level)
- District level

In addition, the client shall organise owner supervision, for the owner's own interest.

The public building administration was in 1999 divided in two separate authorities – both under the General Inspector of Building Control. One is for architectural-building administration, and the other for building control. The intention of having two authorities is mainly to split the administrative-legal functions (like issuing of building permits) from the inspection and control functions.

State supervision

The architectural-building administration operates within the framework of the united public administration, and are thus administrated by the District Governor on the district level, by the Province Governor at the province level (voivodship level), and by the General Inspector of Building Control on the national level. Central tasks of these administrations, are to issue building permits on the District level, and provide guidelines on the national level.

The building control authorities operate in the form of separate organizational units – inspectorates. These tasks are performed by the District Inspector of Building Control and Supervision on the district level, the Province Governor by the assistance of the Provincial Inspector of Building Control on the province level (voivodship level), and by the General Inspector of Building Control on the national level. Their main duties are to perform control and supervision of construction works, and to issue completion certificates.

The state supervision on the national level still is the same authority for the two types of administration: the General Inspector of Building Control. On the national level, the state authorities provide guidelines for how to carry out control, and for what issues to be controlled. In addition, the national level holds the last possibility to settle a disagreement or a complaint.

The national level will also organize investigations in case of catastrophes.

On the province level, the state supervision is then formally still also provided by the same authority; the Province Governor. But here, the tasks connected to building control and supervision are performed by Provincial Inspector of Building Control. The Provincial/Regional level is carrying out the handling of complaints and protests. They also perform supervision of the building control on district levels.

Construction supervision

The District level (above the municipality level) is the “working level” of the architectural-building administration, and the first step in the organization of the Inspector of Construction Supervision.

The architectural-building administration (District Governor) is providing building permits. Their role in handling the applications is to control the documents, to secure that the design documents comprise with the design criteria given by an approved Local plan or by design conditions given by the mayor. They shall also perform a control of the technical content of the project and the competence of the actors before they issue a building permit.

The building control (Chief Inspector of Building Control and Supervision) is during the construction period performing building control and supervision by control of design documentation, construction site inspections, control of construction site log, and control of the contractor's own control routines. Their role in the completion phase is to control whether the completion documents (as-built documentation) is in accordance with the guidelines given in the building permit, and they also perform a completion construction site inspection before issuing of a Completion Certificate.

If they find that there has been carried out some illegal changes in the project, they may demand a new application for the project before they will sign a completion document. If the developer is not making such a new application, the developer must pay a high penalty fee.

The capacity of the offices for Chief Inspector of Construction Supervision may be a problem in several counties – they do not have enough people, and especially the capacity to make the completion supervision on site and issue the Completion Certificate is viewed as a problem.

Owner supervision

There are no formal claims in the Construction Law on the client or on the constructing companies to have owner supervision for their own work – such supervision is looked upon as a matter of their own economical interests.

10.2 Comparison: Control and supervision

The complete systems for control and supervision are distinctively different.

First, the principles of the structure of the distribution of duties must be mentioned, because issuing of building permits are regarded very differently.

In Latvia and in Poland, issuing of building permits and of completion certificates are performed by different authorities. Issuing of building permits is done by local governments, while issuing of completion certificates is done by local offices of state inspectorates for building control. In Estonia and in Lithuania, the same authorities on the municipality levels are issuing both building permits and completion certificates.

This difference in division of duties also affects the structure of the authorities. Some basic information on structures for building supervision authorities, their main duties, and the claims for owner supervision has been put together in a tabular form.

Table 20. Authorities and duties connected to control and supervision

	State supervision	Construction supervision	Owner supervision
Estonia	Technical Inspectorate - guidelines, supervision and superior inspection *)	Local governments - issue building permits - control of documents & actors' competence - construction inspections - issue permits for use	Mandatory for client to organize.
Latvia	State Building Inspectorate - Supervise Local Inspect. - control of documents & actors' competence - may have inspections	Local governments Local Building Inspectorate - control of constructions	Not requested by law
Lithuania	State Building Inspectorate - guidelines, supervision - handling complaints - public client role	State Building Inspectorate - issue building permits - control of documents - may have inspections - issue permits for use	Mandatory for client to organize
Poland	State & Province Architectural-building administration - Guidelines State & Province Building Control - supervise control - handling complaints	District Architectural-building administration - control of documents & actors' competence - Issue building permits District Building Control - control of constructions - control of documents - issue permits for use	The client may appoint an owner supervisor. He may also oblige the author to perform design supervision.

*) By "inspection" in the table, it is meant a physical construction site inspection.

Here are several points to be noticed, and we mention some of those:

- Latvia and Poland have divided the procedures for building permits and permits for use on two different authorities, while Estonia and Lithuania have these functions at the same office.
- In Latvia and in Poland the functions of the complete system of control and supervision are divided on two different authorities – and in Poland this is done also for state supervision, and the state division is again divided on two levels.
- In Estonia and Latvia, issuing of building permits is done by the local government administrations on municipality levels issue, while this is done by the same type of administration but on district level in Poland, and by the local office of the State Building Inspectorate in Lithuania.

- The lowest level of control authorities are issuing permits for use in all the countries.
- In Latvia and in Poland, the construction supervision comprise regular construction site inspections, while this is not the case in Estonia and in Lithuania
- In Estonia and in Lithuania, owner supervision is mandatory, while this is not the case in Latvia and in Poland.
- Control of actors' competence is performed only by three of the countries – not in Lithuania (on regular basis). But in Latvia, this is done by the state level of control, not by local governments.

The following “pictures” may be arising from this. The four countries can be divided in two groups: Estonia and Lithuania on the one side, and Latvia and Poland on the other side. The first group has placed the “first line of control” on the clients (private actors), while this “first line of control” formally is placed by the lowest level of control authorities in the other group. In both countries in the last mentioned group, this lowest level of control authorities is on a level above the municipality level (in Latvia, the local inspectorates cover more than one municipality, and in Poland this authority rests by the district level).

The “first line of control” comprises construction site controls, and these functions are performed in institutionalized form by the authorities in Latvia/Poland, but only as possibilities for supervision by the authorities in Estonia/Lithuania – where owner supervision perform this and file a log. Construction site controls are demanding many resources in Latvia/Poland.

The division of the handling procedures for building permits and for permits for use follows the same division line: In Latvia/Poland there is division between the handling of building permits and permits for use – while these handling procedures are placed in the same authority in Estonia/Lithuania. However, there are differences not following this “division line”: In Estonia, Latvia and Poland issuing of building permits are handled by local governments, while in Lithuania the control inspectorate performs this.

But in the “picture”, it may seem as if the division of the authorities expresses two different attitudes regarding building permits. In Latvia/Poland, issuing of building permits may be regarded more or less as a prolonging of the planning processes because of the close connection between the Local plans and the building permits – the main purpose of a building permit may then be considered to be securing of compliance between the conditions given in the plans and the design of the construction works, and thus be handled by authorities closer to the planning offices. In Estonia/Lithuania, both procedures may be looked upon as just two aspects of a building process, and both aspect deals with documentation control: the first procedure deals with compliance between the condi-

tions given by the Local plan and the building project documentation, and the next procedure deals with compliance between these documents and the as-built-documentation.

In Latvia/Poland, the legislation has a wider focus on the control authorities than in the two others. In both these countries, the legislation has specific instructions, describing their mandates, their duties and their handling procedures and possibilities for ordering prescripts. The legislation also describes the organization of the control authorities on different administrative levels rather detailed. These issues are also mentioned in the legislation in Estonia/Lithuania, but to a distinctively more moderate degree.

11. Complaints, irregularities and sanctions

11.1 Complaints and public interests

11.1.1 Estonia

Complaints and public interests

In principle, the public interests and the democracy are taken care of in the planning processes. But for building activity, there will be two procedures for the early stage, depending on if a detailed plan is mandatory or not. If a detailed plan is mandatory, the client must perform such, and this will be handled as a Local plan regarding public display and public hearings. If a detailed plan is not mandatory, the client must apply for design criteria to be given by the Mayor.

When a client applies for a building permit, the building design documentation of the project must be in compliance with the conditions given in the Local plan. There are no claims for the client to have a public display or hearing of the project connected to the application procedures, unless the project will be of significant importance to the environments.

But according to the law, the information contained in building permits shall be published on the web site of the state register of construction works – that is when the application for a building permit is approved, but before the actual construction works starts.

Complaints are often forwarded because neighbours are not aware of a building activity before it starts up – and then they disagree.

Appeal courts/Handling of complaints

A complaint is first handled by the local governments, to try solving the case there. The handling body is the same office as the one who was handling the building permit, and the complainer can go to these offices which most often have “open hours” twice a week.

The next step is then to take the case to court – this implicates that the way to the court is rather short, and the cases are often brought into court even if the case may not be of a serious character. In court the lawyers decide these kinds of cases without design/planner competence or jury.

11.1.2 Latvia

Complaints and public interests

The Building Act states that according to normal procedures, a project must be built in accordance with an approved local plan (which has been on public display).

In addition, the local authorities have the responsibility for announcing the applications for building permits in public, and warn the neighbours – even if the client/developer has to pay the costs for this.

It also states that if an intended construction is a structure of public importance, if the expected costs exceed a certain amount, or if the construction will affect the environment or territories in public use, the local government must ensure a public discussion on the project prior to a decision on issuing a building permit. The Cabinet shall give instructions for the procedures for the public discussions.

In cases of open hearings, the developers often make more than one design concept, so the public hearing can have a more open-minded discussion.

Until recently, most of the country did not have approved Local plans – which are needed for all building activity. Without a Local plan, every project must follow the procedures for open public hearings. This is regarded as a problem in many of the municipalities, because the handling procedures takes longer time and leads to a lower building activity. Now the Planning Act requires that all local governments must have developed Local plans till 31. December 2007.

Aesthetics is not a big issue. The looks of a building is seldom the reason for complaints, it is not regarded as the responsibility of the Inspectorate, and the neighbours don't care unless it is a very big, very ugly and very important project.

Appeal courts/Handling of complaints

There are two possible procedures for complaints, but all complaints must first be sent to the local administration.

The first kind of procedure takes 3 steps and is following: Firstly the complaint should be submitted to the local authorities if the answer of local authority is not satisfying, then the complaint should be forwarded to the state level (the State Building Inspectorate/the Ministry of Economics), and/or further to the administrative court. Complaints following this procedure will be complaints on public officers or case handling, or that formal procedures are not being followed. The complainer has to prove that he is a stakeholder in the actual case.

The second kind of procedure takes 2 steps and is following: Firstly complaint should be submitted to the local authorities (municipalities), and if the answer is not satisfactory it should be further submitted to civil

court. Complaints following this procedure will be complaints on illegal building activity.

The “model” for administration of complaints is taken from Germany.

However, often the complaints concern the content of the actual project – they are not actually complaints on illegal building activity, but disagreements on the solutions for the project. In these cases, the complaint or disagreement should be an argument either in the planning process or in the public hearings of the project as a part of the democracy procedures of public interests.

Errors in construction works or lack of fulfillment of contracts are considered a matter between to private parties.

11.1.3 Lithuania

Complaints and public interests

The building act does not mention public display of applications for building permits, but a project must be in accordance with an approved local plan (which has been on public display).

However, the act states that the client must inform the public when he starts the design process.

Appeal courts/Handling of complaints

Complaints are being handled first by the County level of Building Inspectorates (the first level, where construction supervision is performed).

Second complaints or difficult/complicated cases will be forwarded to the State Building Inspectorate.

11.1.4 Poland

Complaints and public interests

In principle, the public interests and the democracy are taken care of in the planning processes. When a client applies for a building permit, the building design documentation of the project must be in compliance with the conditions given in the approved Local plan. If the construction site is not covered by a Local plan, the Mayor must order planning conditions/design criteria for the site.

The local authority shall in each case verify the possession of needed opinions, and the building act comprises handling procedures for complaints. It seems as if it is a responsibility of the client to get hold of public opinion when this is needed, but there are normally no claims on the client to have a public display or hearing of the project connected to the application procedures, unless the project will be of significant importance to the environments.

Until recently, the building act had an article saying that all parties should be informed of applications for building permits, and the projects were normally put on public display for everyone to send in notes/protests on a project. These procedures were changed (ca 2004), and now only “concerned parties connected to the area of a building structure’s influence” (stakeholders) can send in notes/protests – and the applications are no longer put on public display, unless local authority demands this.

Now neighbours are regarded as “concerned parties” (stakeholders), but they are not automatically warned, and they then often make protests first when they see the actual construction activity. But if they are warned and make complaints, this may cause considerable delay in the projects because of circumstantial handling procedures of complaints. A stakeholder must consent if the construction work is affecting him.

A situation where neighbours can almost stop the project or cause significant delays (and even claim the developer for bribes for not putting the developer in this situation) is looked upon as a problem by the developers, but this is not regarded as a matter of the legislation.

Appeal courts/Handling of complaints

Building permits are issued by the Architectural-building administration at the District (county) level. But protests and complaints must be sent to the Building Control at the Provincial (voivodship) level. When they handle the complaint, they first check if the building permit is in order. If so, the building activity can continue, and it is not likely that a complaint will cause a stop of the project (it is normally too late when the building permit is issued). But if the activity is started without approved building permit, the activity must be stopped immediately.

The next step is to take the conflict to the Administrative Court. The building act states that when claim is made for a building permit decision to the Administrative Court, the court may suspend the execution of this decision at claimant’s motion, subject to lodging by a claiming party a deposit to protect the client’s possible loss, due to the suspension of a decision. If the claim is recognized to be justifiable, whole or in part, the deposit shall be returned, but if the claim is dismissed, the deposit is intended for covering the client’s claims.

11.2 Irregularities and sanctions

In all the countries, the Building Acts are prohibiting illegal building activity, but still such activity occurs. Irregularities and illegal building activity are actually not a part of the building legislation, but sanctions are – and we will first have a short note on some major challenges connected to this, within each country. The purpose is to see if the building

legislation is fit to deal with these major challenges. This part of the chapter is primarily based on the interviews with the representatives from each country.

11.2.1 Estonia

Irregularities

Illegal building activity occurs – this may be building activity where the project is not in compliance with the given restrictions, guidelines or the building permit.

But building activity without a building permit is a more common problem. Most often this occurs because the self-builders of own dwellings do not have knowledge of the formal procedures. The local authorities then try to guide the self-builders, and they will try to sort out the paperwork as soon as possible even if the project already has started.

The authorities do not always discover illegal building activity themselves, because supervising of all possible building activity will take too much of the capacity of the authorities. The local authorities most often are warned about this kind of activity by reports from neighbours.

Mainly, clients and developers usually try to follow the plans, and act according to the legislation. The protection guidelines for Building restriction zones are strong, and they are followed. Building in such zones require permit from the Minister. The local authorities cannot give dispensations from this, but they can practice stronger restrictions than the state restrictions.

Sanctions

When illegal building activity is discovered, the local government has mandate to decide what to do. Most often the client has to make a proposal to change the detailed plan (and this must be handled by normal procedures and be approved), and in such cases the client is also given a penalty fee. The local government may also decide that the client must change the building, in addition to pay a penalty fee.

According to the Building Act (§ 40), dangerous construction works or construction works erected without building permit shall be demolished. If the client does not fulfill this order, the local government may do so on the clients' behalf and for his cost. But in practice, only by one occasion the client have had to demolish the building.

Penalty fees are the common reaction – both for building activity without building permit, for other types of illegal building activity and for a client's failure to perform his duties by law.

11.2.2 Latvia

Irregularities

Illegal building activity occurs, especially in the coastline protective zone, where there are several conflicts connected to the building activity. Latvia has a long and beautiful coastline, and this is a zone with strong restrictions for building activity. The challenges connected to illegal building activity may be:

- The local authorities handle an application and refuse a building project verbally, but they do not give the answer in written form; afterwards the verbal refusal is difficult to prove.
- It happens that foreign companies (most Lithuanian) have managed to build an illegal house in the restricted coastline zone without any application. Sanctions are then a problem, crossing borders.
- Bribing may occur, because the houses in the restricted zone are very attractive, and they may be sold to very rich people (with money for bribing available). A more sophisticated way of bribing may be seen when local authorities are selling some coastal plots to acquainted people (with the purpose “boathouses”), without any announcement or open competition amongst bidders).

Lots of single family houses are built without any kind of permission or application for building permit. But this building activity is always discovered – by neighbours or by the Inspectorate. Sanctions will be necessary to stop this activity and reduce the building activity in the grey market or in the protected areas.

Sanctions

Current legislation does not allow any kind of illegal building. According to the planning and building legislation, there are several possibilities for penalty reactions on building without a building permit and other illegal building activity. The official strategy is to move the inhabitants of illegally built houses, and demolish the illegally built house. As a last option, they may also try to make the building legal in some way (even if this is a difficult matter sometimes).

The Building Act states that illegally built constructions shall be demolished, and if the client has not done this within the time period specified, the local government may organize this, for the cost of the client.

But in practice, these sanctions are not in use. Today money/penalty fees are the only sanctions in use, even if there is a legal possibility to demand a house demolished (the fees then are 5 times higher for legal persons than for physical persons).

Stricter practice of sanctions will be necessary to reduce the illegal building activity in the protected areas. But the private parties go to court, proclaiming that the local authorities had given acceptance. And because there are too little written documents on the cases, the cases takes long time in court – and often the private parties win the cases. And for the Building Inspectorate it is also a challenge that they do not have sufficient resources to do their job in a proper way.

Sanctions are a problem – they have legal possibilities to use sanctions, but these possibilities are difficult to use in practice. It takes lots of resources, long time, and they are in most cases ending up in court. And even if the law is strict, the court is very liberal when it comes to this kind of sanctions. There is hardly any example of demolishing an illegal built house.

The administrative process in building (handling in court) may start with the administrative act (Decision) issued by the Local Building Inspectorate or the State Building Inspectorate, concerning the building actors or in some way affected stakeholders.

There are two possible ways of administrative process (court) which in some cases persons may choose between. It is not possible for a person to make a choice if he/she complains about the decision or action of the State Building Inspectorate. Therefore a person should submit a complaint to the Ministry of Economics which evaluates the complaint and makes an appropriate decision. On the bases of the decision of the Ministry, an administrative act should be concerned as the legal document which could be appealed in the court. Further administrative process should be carried out in accordance with the Administrative Process Law.

A person can choose which way to be followed in the cases when the person is intended to complain about decision or action of Local Building Inspectorate. Therefore any person may choose whether (1) to complain to State Building Inspectorate and initiate new administrative process (court) or (2) to complain to the local municipality. In the first (1) case State Building Inspectorate makes a decision which could be appealed in court. In case (2) the local municipality makes a decision concerning the decision or action of the Local Building Inspectorate, and such decision could be appealed in the Administrative court (local).

Persons may think that they may save up time by taking the decision of the Local Building Inspectorate to the local municipality, because the decision from the local municipality directly could be appealed in the court.

In cases where a person submits the claim of suspension of the building permit to local municipality, the operation of building permit is stopped, but if he/she submits such claims to the State Building Inspectorate, the operation of the building permit will not be suspended. Appeal about the decision which suspends operation of building permit does not cancel that decision – the building permit remains suspended.

The court has 3 levels: State level, Regional level, and Local authority:

- The State level will handle every application where dispensation is needed. This may be court, government or ministry/department, depending on the matter.
- The Regional level will handle issues of legal matters concerning the Planning Act. This may also be handles by the Ministry of Regional Development

11.2.3 Lithuania

Irregularities

Illegal building activity occur, most often in the coastal zone or other restricted areas.

However, there are several possibilities to make illegally built constructions legal, or examples of legal building activity in restricted areas where building activity is illegal:

- A building permit is valid for 10 years, and it is even possible to get prolongations. This may be a problem, especially in the coastal zone, by lakes or other attractive places, because the public attention and awareness for protection aspects and more is changing and the culture for planning is developing – but these old building permissions are still valid. Because these areas now are restricted for building activity, the local authorities sometimes takes this kind of cases to court.
- Buildings in the coastal zone are attractive, and people are getting richer, willing to spend much money even on illegally built buildings in the coastal zone. The authorities try to stop this activity by penalty reactions, but in most cases this means a penalty fee of a minor/symbolic amount, compared to the price of the property.
- Illegally built houses may also in some cases be made legal by a postponed formal handling of the building permit, and it even occurs that the clients get permits where the project would not be accepted according to the state guidelines. In these cases the activity is not in line with the plans, the central policy or the general guidelines, but they are not illegal in such a way that a client/company can be punished.

Sanctions

According to the Building Act, there is a formal possibility of demanding demolishing of a house. In cases of illegal building activity, the general attitude by the government is that illegally built buildings shall be demolished – and sometimes this actually happens.

But the constitution of Lithuania is protecting private property; it is sometimes very difficult to order sanctions like demolishing or actions that represent severe reduction of private value.

The most common penalty reaction is penalty fees.

11.2.4 Poland

Irregularities

In principle, all building activity must be done in compliance with an approved building permit, based on compliance with design criteria given in an approved Local plan.

But in practice, there are modifications on this. If there is an approved Local plan for the area, the construction may be made legal by sending in a “postponed” application for building permit in compliance with the Local plan, and also (if necessary) change the project so that it in the end will be so. And if there is no Local plan for the area, or if it is not possible to change the project to accomplish the conditions given in the Local plan, the Mayor may approve the project himself.

This opens for a practice of illegal building activity, which later is made legal: The investors calculate with a “postponed permission” and start building activities without any formal procedures at all. This situation may lead to a physical development which is not coordinated with regional plans, nor in accordance with other formal processes for spatial planning and development.

The Chief Inspector of Construction Supervision should monitor this kind of activity, and discover illegal building activity, but they have not the resources and the capacity to do so. Illegal building activity will (mostly) not be discovered and handled by the authorities, unless neighbours complaints or send in notes to report the activity.

Most often this kind of illegal building activity is connected to dwellings. Buildings for professional activities would be more difficult (almost impossible), because there are several other public inspections concerning professional activity, and if this activity is carried out in a building without the necessary documentation, it will be discovered.

Sanctions

The building act opens for demolishing of illegally built construction works.

If a construction is built up without a building permit, there are two options: Either the construction has to be demolished, or the construction has to be made legal – after the client and/or the developer/construction company have paid a penalty fee.

In case of a situation where the Mayor shall give a “postponed permission” or not, and he does not give such a permission, the house shall be

demolished, according to the legislation. But mainly, the policy in such cases is to find a possible way to make the construction legal.

The most common penalty reactions are penalty fees.

Bribing may also be a problem. But bribing is not a legal way of acting, and this is not a matter of the building legislation. As long as this is not legal, this is a police matter.

11.3 Comparison: Complaints, irregularities and sanctions

11.3.1 Complaints and public interests

Public interests are, in all the countries, mainly taken care of by the planning processes. Connected to the handling of applications for building permits, the public interests is not an ordinary part of the handling procedures, and therefore publishing of applications or warning of neighbours are not necessary – except in Latvia. But in all the countries, there are some exceptions from this.

The exceptions from this main principle will be:

- In Estonia, the information contained in a building permit must be published by the authorities on the web site of the state register of construction works, after approval.
- In Latvia, the authorities must announce the applications and warn the neighbours as a part of the handling procedures of an application for a building permit. And in cases of applications “of great significance or public importance”, the authorities must organize a public hearing on the project before approval of the project.
- In Lithuania, the client must inform the public when he starts a design process.
- In Poland, the local governments in each case shall verify the needs for public opinions, and decide the procedures for obtaining this.

The possibilities to express a public opinion after a Local plan is approved, through handling processes connected to an application for a building permit, are then in fact present in all the countries except in Estonia, even if the main principle is that democracy is taken care of in the planning process.

Complaints most often are forwarded because neighbours are not aware of a coming construction work, and disagree on the project when they see it. But they may also represent a “warning” of illegal building activity. But just very seldom and occasional, the complaints are forwarded because of aesthetic matters (the only possible exceptions may be in Latvia).

Handling of complaints may differ between the countries:

- In Estonia, complaints are handled by the local authorities – the same authority as the one to issue the building permits. And the next step is to go to court.
- In Latvia, the local authorities also are the first step for a complaint – but then there are two possible procedures: whether firstly it may be submitted to the Local municipality or it may be submitted to the State building Inspectorate.
- In Lithuania, complaints will be handled by the first step of the Building Inspectorates, and will only be forwarded to the State level in case of difficult or complicated cases.
- In Poland, complaints will be handled by the Province level of the Architectural-building administration, and the next step will be the court. Complaints on the content of a building permit will be dismissed.

In principle, Estonia and Lithuania have similar solutions, where complaints are handled by the first level of authorities, if possible. In Latvia and Poland the complaints in reality are handled by the next level of authorities (the first step in Latvia primarily forwards the complaints). In all the countries, complaints on the content of a building permit will be dismissed.

11.3.2 Irregularities and sanctions

Irregularities and illegal building activity occur in all the four countries – as in all other countries – and that is why the building legislation comprises articles on sanctions. But the pattern of the major challenges of this illegal building activity differs between the countries:

- In Estonia, illegal building activity primarily is performed by self-builders of own dwellings in rural areas, with little knowledge of formal procedures.
- In Latvia, illegal building activity primarily is connected to the restricted coastal zone, where rich people (often foreigners) build without building permits in this attractive area – and often also claim (with and without reason) that they have a verbal approval from the local authorities, which make penalty reactions difficult.
- In Lithuania, illegal building activity also primarily is connected to the restricted coastal zone, performed by rich people. But here is another challenge, because building activity in this zone (against the directives from central authorities) are being made legal, both by legal impact of old approvals, and by “postponed approvals” when illegal building activity already is completed.

- In Poland, illegal building activity primarily is a challenge in urban areas. Because of lack of both dwellings and of approved Local plans in urban areas, developers may calculate on “postponed permissions” and start building without any formal procedures – and the strategy often works.

In all the countries, the legislation gives the authorities the possibility to order demolishing of illegally built construction works. But in all the countries, this is a very seldom used reaction; altogether there was only one known example of this (in Lithuania).

In all the countries, the common sanctions are penalty fees – of different amounts.

Penalty fees may have some effect in Estonia, but in the three other countries, the major parts of the illegal building activities are performed by clients who have enough money to pay the penalty fees without much effort and even calculate these fees into the project costs.

In addition, we see that in all the countries, illegal building activities also have connections to the practice of the local governments. As long as there are often used possibilities to either have the projects “postponed approved” (and pay a “little” fee), made legal in other ways, or not being persecuted at all, the possible sanctions given by the building legislation will be of minor interest.

C. Implementation

Introduction

Handling procedures may be described in very detailed manners. This comparison between four countries is meant to focus on the more superior similarities and differences, and there will be difficult to go detailed into all handling procedures of all the countries – and in addition, this may lead to less focus on the main aspects.

First, there will be a (rather short) description of the main principles of procedures in each country. Then the procedures will be put together in a tabular form, and commented.

The main issues to be commented, will be application procedures for building permits, handling procedures and time limits for the handling authorities, and claims for documentation on the projects to obtain completion certificates.

12. Handling procedures

12.1 Estonia

12.1.1 Basic principles

The Ministry is dividing the construction works into two categories; whether or not detailed plans are mandatory (see pt. 2.3). In areas where detailed plans are mandatory, these plans will provide more detailed design criteria. In areas where detailed plans are not mandatory, the Comprehensive plans are legally binding and the detailed design criteria will be defined by the local government (by Mayor).

Detailed plans consent building conditions, are mandatory for all building activity, and the building activity must follow these directions. By the legislation, there are no possibilities to depart from these directions or to obtain dispensations – neither for the local authorities nor central authorities. In case of lack of compliance, the client has to change the project design and apply for a new building permit, then for a project according to the Local plan.

An approved building permit is mandatory for all building activity, except for small constructions (less than 20 m²). For small construction there is a claim for a written consent. (ref. pt.7.2).

There are no difference between modernization projects and new production, because the process is the same – and the technical claims are the same. And for all construction works there are claims for building design documentation, a building permit, and a permit for use (completion certificate).

12.1.2 Applications and handling procedures for building permits

If detailed plans are mandatory but not prepared/approved, the client may prepare such plan. But the approval procedures will follow normal procedures for public display and public hearings.

If detailed plans are not necessary, the client must apply for design criteria to be given by the Mayor.

The requirements for an application for a building permit are as follows:

- The client must have appointed an owner supervisor, with documentation on his professional skills, and these must be listed in a central register. (At the latest, he may be appointed 3 days after approved building permit).

- Building design documentation must be compliant with the requirements given in a plan or by the Mayor. This is a professional responsibility of the owner supervisor, but towards the authorities, this is formally a responsibility of the client.
- For a written consent, building design documentation is not required.
- There are no formal claims on procedures for warning of neighbours.

The owner supervisor will act on behalf of the client, and he must inspect the conformity of the building design documentation to the requirements. He is controller for the project, and he also has economical responsibility for this on behalf of the client. Later on he must inspect the conformity of the construction work to the design documents and perform the as-built documentation. But in case of deviation between the documentation and the formal claims, the authorities will promote sanctions to the client/owner (not to the supervisor).

The owner supervisor's role is important, because the role of a private client/owner is rather new – with the new law of 1994, every aspects regarding private ownership and the owner's responsibilities were changed.

The handling procedures for an application often start with an early conference between the designer/architect and the local authority. This meeting is voluntary, but regarded as very useful. The intention of this meeting is to define the requirements and the need for documentation on the project. The local authorities normally have "open hours" twice a week, and in these hours they have such "early stage conferences", consultations, and they receive complaints.

An application of design criteria in cases where detailed plans are not mandatory shall be answered within 15 days.

Handling of an application comprises:

- Check of compliance between project documentation and design requirements
- Check of the competence documentation on the actors – at least on the owner supervisor, the head of the design firm and the head of the construction firm, and their listing in the Central Register.
- Listing of the firms in the Merchant Register
- Approval of a construction plan – with referees to building codes and standards for the construction works, to prove if they meet all requirements (mechanical strength and stability, fire safety, environmental safety, usage safety, noise protection, energy conservation, heat retention).
- In case of buildings involving gathering of large numbers of people, there shall be appointed an expert assessment of building design documentation for buildings (on the authority's cost, unless major faults are discovered and the client then has to pay), and this expert

assessment shall not be conducted by the same person who prepares such documentation.

- Issue (or refuse to issue) the building permit within 20 days, including precepts on additional conditions (for written consents, the handling period is 10 days)
- Public announcement of the content and conditions of the approved building permit on the website of the authorities within 3 days

During the construction period, the local authorities normally perform physical inspections on each building site 2–3 times; as a minimum, they inspect the foundations and the completed construction works (before issuing of completion certificates), and often they in addition will have an inspection to supervise the completion of the framework (waterproof construction).

12.1.3 Completion certificates (claims and procedures)

The permit for use (completion certificate) grants that the construction works is completed in compliance with the conditions given in the building permit. The permit for use is an agreement on the part of a local government that a completed construction works conforms to the requirements for such construction, and that it may be used for the intended purpose.

The client must apply for a completion certificate, and the demands for obtaining this, are:

- “as-built” documentation, proving compliance with the completed construction and the approved building permit, normally performed by the owner supervisor
- a document certifying that technical inspection has been performed, proving compliance between the construction and the technical claims
- the client must pay a fee

As a part of the handling procedures of the application for the completion certificate, the last of the three mentioned construction site inspections will be performed.

The completion certificate shall be issued by the local authorities within 20 days. If the completion certificate will be refused, the local authorities must issue a precept within the same time limit.

The local authorities shall, within 5 working days, make a notification of the completed erection – that normally means a public announcement on the web-site.

In case of severe accidents involving construction works, the local authorities also must organize an investigation into reasons for the accident.

12.1.4 Other aspects

In Estonia, they are still working on better harmonization toward EU-directives and standards, and implementation of those to the Estonian legislation, including handling procedures.

Applications for building permits may be performed by electronic means.

12.2 Latvia

12.2.1 Basic principles

The Building Act is valid for all types of building structures. In general a building permit is necessary for all kind of construction activities, and exceptions just concern small building activity. And there is not mentioned any classification of the building structures.

All building activity shall be conducted in compliance with an approved plan – this may be an approved Local plan (covering a municipality), or a Detailed plan (covering a part of a municipality) if this is regarded necessary (see pt. 3.3). These plans will provide design conditions for the building activity, and they are legally binding for the building activity.

12.2.2 Applications and handling procedures for building permits

Handling of applications for building permits is performed by local governments. As a first stage of a project, a developer must apply for a permit to start the design work. In the handling of this application, the authorities check if the early draft is compliant with the approved local plan or detailed plan.

For small and simple projects, the permit to start design work will be given directly. The design documents must be performed in compliance with the design conditions in the approved plan (local or detailed) for the area, and the client must then apply for a building permit. If the compliance with the given conditions still is maintained, the application for a building permit will be approved.

In case of projects of higher complexity, the handling procedures start with a meeting based on very early drafts. The agenda for the meeting is to define all design conditions for the project, and they will be included in the permit to start the design work. If the project has minor deviations from the conditions given in an approved plan, there will be given specifications on redesign. If the project has major deviations from the given conditions, a special council (the Board City Council) will evaluate how to handles the deviation – and the conclusion may be a claim for a new detailed plan.

The design process comprises research processes and drafting of a pre-project. This pre-project shall be discussed with representatives for the authorities before final the building design documentation is worked out. A more detailed flowchart for the design process can be found in information charts for “Building in Riga” (by the Riga municipality), and in the report “Building Sector Regulations” by Bengt Nyman (TemaNord 2004:547).

The requirements for the final application for a building permit are as follows:

- Building design documentation must be compliant with the requirements given in a plan.
- Profession Certificates on all the actors (see pt. 8.3)
- Companies must be listed in Construction Merchant Register

The local authorities have the responsibility for announcing the applications for building permits in public, and warn the neighbours – even if the client/developer has to pay the costs for this.

If the compliance between the final design documentations and all given conditions is satisfying, the application for a building permit will be approved.

The application and the handling procedures are one single process seen from the applicant. But for the local authorities, there are two steps in the handling procedure: In the early stages they consider the compliance between project and the conditions given in the approved plan, and in the handling of the final application for a building permit they consider the content of the project/certifications on the actors.

They have time limits for most of the steps in the handling procedures.

12.2.3 Completion certificates (claims and procedures)

Handling of applications for completion certificates is performed by the Building Inspectorate.

The will normally perform construction site inspections during the construction period. And a final construction site inspection of the completed construction work is mandatory before issuing a permit for use (completion certificate).

The demands for obtaining a completion certificate are:

- “As-built” documentation, proving compliance with the completed construction and the approved building permit
- A declaration from the contractor confirming that the construction work is completed and in order, according to all technical claims

- Documentation on the building control and the final construction site inspection from the Local Building Inspectorate

A “commission” shall verify the approval of the completion certificate.

12.2.4 Other aspects

Today it is possible to blame the authorities if they have approved a building with severe faults. In grave cases this can end up in court, and the authorities may pay large compensations. This may be a problem, especially as the building site inspections is just a visual check. However, the Inspectorate can ask for an expert (paid by the client) if they suspect any kind of “disorder”, and their responsibility cease after a final meeting with all stakeholders.

12.3 Lithuania

12.3.1 Basic principles

Detailed plans consent building conditions mandatory for all building activity. By the legislation, there are no possibilities to depart from these directions or to obtain dispensations. In case of deviation from the given conditions, the client will have to change the project and send a new application for building permit, then for a project in accordance with the detailed plan.

An approved building permit is mandatory for all building activity, except for small constructions (less than 80 m²) and routine repairs. For small construction the authorities must have a notification, which shall be approved by an institution authorized by the Government.

There are no differences between modernization projects and new productions, because the process is the same – and the technical claims are the same. And for both construction works there are claims for building design documentation, a building permit, and a permit for use (completion certificate).

The Law on Construction does not mention any classification of the building structures.

Presence of documents proving the client's ownership to the construction plot is mandatory for applying for a building permit.

12.3.2 Applications and handling procedures for building permits

Building permits are issued by the county governor for a construction work in a territory administrated by several municipalities – else, by the

municipality Mayor. The municipality Mayor shall inform the county governor by a copy.

The design process for a building project starts with an “Early stage conference” between the client and the local authorities, and this is obligatory. At this conference, the client presents an early sketch or concept, the authorities define specific design conditions for his project, and the client may start the design process based on the conclusions from this conference. Summits from these conferences are not public available, and not a subject for public hearing – they are thus not a guarantee for a building permit, but an important step to get a dialogue with the local authorities – to the better for both parties.

The local authorities shall give these design condition at latest within 3 days for construction works connected to utility networks and traffic, institutions for environmental protection or in protected areas, and within 10 days for other construction works. The local authorities must within the same time limits inform about reasons for refusing to issue a set of design conditions, in case of refusals.

The main areas of technical construction activities shall be as follows:

- Construction investigation
- Design of a construction works and supervision of the implementation of a design documentation of a construction works
- Expert examination of a design documentation of a construction works and a construction works
- Construction operations
- Technical supervision of the construction.

The main areas of technical construction activities may be directed only by heads meeting the qualification requirements approved by an institution authorized by the Government, and have attestation documents.

Handling of an application for building permit then mainly comprises:

- Check of documentation on the client’s ownership of the construction site
- Check of compliance between project documentation and design requirements
- Owner supervisor’s report on the control of the design work
- Check of the competence documentation on the heads of the main areas of technical construction activities mentioned above

In case of construction of new construction works and reconstruction works, general and/or partly examinations of design and of construction works (done) are obligatory and shall be performed by owner supervisor, and his reports shall be supervised by the public supervision.

The authorities must issue (or refuse to issue) the building permit within 20 days, including precepts on additional conditions. In Lithuania, there are time limits on all parts of the handling procedures.

12.3.3 Completion certificates (claims and procedures)

When a construction work is finished, the Building Inspectorate will arrange an inspection on the building site, with a group of people ("special commission") with special competence (and from different institutions), depending on the purpose of the building.

A completion certificate may be issued by the Building Inspectorate on basis of a report from this commission, verifying that the construction has been completed in accordance with the requirements of the mandatory documents.

With a completion certificate, the building can be registered as Im-movable Property, and then be insured and purchased.

12.4 Poland

12.4.1 Basic principles

The Construction Law is valid for all types of building structures. And all building activity shall be conducted in compliance with an approved Community plan (covering a municipality). Such plans will provide design conditions for the building activity, and these are legally binding.

Building activity must be based on an approval from the District Architectural-building administration, and mainly this means a building permit. But for small construction works specified in the article 29 in the Construction Law, there will be sufficient with only a notification, and both the complete application and the simplified procedure are to be based on an approved plan. For very complex construction works there may be claims for a development plan.

12.4 2 Applications and handling procedures for building permits

First, the procedures for a notification will be described. An application for a notification shall comprise a description of the small construction work, including design documentation and a description of the purpose of the building. Enclosed to this, there shall be a declaration regarding the owners' right to dispose the property for the construction site, and the date of the commencement.

The notifications will be examined by the authorities, but the client will not get a formal approval. No reaction of competent authority within

30 days means that there is consent to start the construction works – there is a rule of “silent consent”.

In cases of complex construction works or construction works that will have influence on the environment or neighbouring plots, where a development plan is required, this plan is regarded as the first step in the handling procedures for a building permit, but such a plan shall be handled with public hearings or at least with the plan on public display – as handling procedures for plans. In cases of influence on neighbouring plots, the development plan shall also cover these properties. The development plan will provide early sketches of the purpose, volumes and areas of the construction works, in addition to more detailed design criteria than given in the approved Community plan. The developer must apply for a building permit in addition to this plan.

In addition, there are separate procedures for building activity where there is no plan. In such cases, the Mayor shall within 30 days give design criteria for the construction works, after an application for such by the client.

But the normal procedures will be an application for a building permit. The demands for a complete application are as follows:

- The construction has to be according to an approved Local Plan
- There has to be complete project documentation on the construction
- The Actors must have appropriate qualifications (licenses) for their role in the project
- The client must have a declaration proving the client’s right to dispose the construction site
- There must be an appointed inspector for/within the project, for the clients own control

Regarding the developers schedule for a project, delay of a project may often occur before the developer gets the building permit, in the process when the authorities handle the application. The authorities can demand lots of additional information in this process, and the number and type of documents they will need is not completely listed before they start the handling process. To the developer, it may seem as if these demands for documentation increase in an unpredictable way.

When a Building Permit is achieved, the client has to start the construction work within two years after the date of the permission. However, if there is any delay in the project, they may inform the authorities and prolonging of the approval will normally be accepted.

12.4.3 Completion certificates (claims and procedures)

The completion certificate of a construction work is issued by the Chief Inspector of Construction Supervision. To get such a certificate, the client

has to deliver complete as-built documentation on the project, and he has to verify the ownership of the new building. The public officer must control this within 3 weeks, and then issue the certificate, and it is not legally possible to use the building until the completion certificate is issued. However; this control often takes much longer time.

12.5 Comparison: Principles of handling procedures

Table 21. Handling procedures for a building permit

	Estonia	Latvia	Lithuania	Poland
Basic principles				
Division of application forms	- Building permit - Written consent	- Building permit - Written consent	- Building permit - Notification	- Building permit - Notifications
Other aspects	Two procedures: whether or not plans are mandatory	-	-	Complex projects may need a developers' plan
Applications for a building permit				
Pre-procedures	If detailed plans are not mandatory, client must apply for design criteria	Client must apply for a permit to start design work (- small projects will get this at once)	- Client must prove ownership - Auth. must give design criteria	- In case of lack of plans: Apply for design criteria - Client must prove ownership
Claims on application for building permit	- Design doc. - Owner supervisor - Qualifications - Merchant reg.	- Design doc. - Certificates on actors - Merchant register	- Design doc. - Owner supervisor - Qualific.	- Design doc. - Qualifications - (Owner supervisor)
Competence claims	On all actors	On all actors	On heads	On all actors
Warn neighbours	No	By authorities	No	No
Handling procedures				
Early meeting	Yes, voluntary	Yes, in complex projects	Yes, mandatory	(May be, voluntary)
What is evaluated	- Compliance to plan - Competences - Ref. to standards	- Early stage: Compliance to plan - Late stage: Content & certificates	- Compliance to plan - Competences - Owner supervisor's report on doc. check	- Compliance to plan - Competences
Public information	Announcement on website 3 days after issuing	Yes, by start of authorities' handling of case	-	-
The construction period				
Authorities' role	2-3 inspections	Inspections	Only supervision	Inspections
Permit for use				
Claims on client	- As-built-doc. - Doc. to prove a technical inspection - Pay a fee	- As-built-doc. - Declaration confirming that work is completed	- As-built-doc. - Owner supervisor's report on control	- As-built-doc. - Verify ownership to building
Procedures	- Authority's final inspection - Doc. check	- Final inspection - Doc. check - Commission verify	- Final inspection by a commission - Doc. check	- Final inspection - Doc. check
Other aspects				
Time limits	Yes, on each stage in handling procedures	Yes, on each stage in handling procedures	Yes, on each stage in handling procedures	Yes, on each stage in handling procedures
Electronically	Yes, possible	(?)	(?)	(?)

12.5.1 Basic principles

In all the countries there are simplified procedures for small projects, but in Latvia these differ from in the other countries.

In Estonia, Lithuania and Poland these small construction works are defined in the legislation, and they will then only need a Notification (or written consent) – not a complete application for building permit. In Latvia, all projects will follow the same procedures – but there all will have to start with an application for a permit to start design work, and then the small construction works may start directly.

Estonia and Poland have procedures where the client has to ask or apply for design criteria in some cases. In Estonia, this is the case if detailed plans are not mandatory; in Poland, this is the case if there is no approved plan for the construction site.

In addition: In Poland, complex construction works may lead to a demand for a developers' plan.

12.5.2 Applications and handling procedures for building permits

Some of the pre-procedures are mentioned. In addition, client must prove ownership to the construction site in Lithuania and in Poland.

An early meeting between client and authorities by start of the design process is possible in all the countries – but with different status. In Lithuania this is mandatory, in Estonia this is voluntary, in Latvia this must be done in certain complex building cases, and in Poland this is just an option.

Mainly, claims for the application documents and the evaluation of the applications for a building permit do not differ much between the countries – but there are some minor differences. They will all need to have design documentation in compliance with the conditions given in plans or by local governments, and they will all have to prove the qualifications on the actors with qualification claims.

But in Estonia and in Lithuania, there must be appointed an owner supervisor – this is also mentioned in some instructions for handling procedures in Poland, but not in the legislation text. And in Estonia and in Latvia the building companies involved must be listed in a Merchant Register.

The client does not have to warn the neighbours in early stages in any of the countries, but in Latvia this will be done by the authorities – and in Estonia the results of an application will be announced on the website of the authorities after issuing of the building permit.

In the construction period, the authorities perform construction site inspections regularly in Latvia and in Poland, by some defined stages in Estonia, and just as supervision in Lithuania.

12.5.3 Completion certificates (claims and procedures)

The handling procedures for issuing of completion certificates are rather similar in the countries: The client will have to apply and send in as-built-documentation, and there must be documentation on the quality of the completed construction work. It seems as if this final inspection with documentation is performed by the authorities in all the countries.

12.5.4 Other aspects

In all the countries, there are given time limits for the authorities on each stage in the handling procedures.

In Estonia, they have confirmed that applications can be sent electronically, but we do not have information on this from the other countries.

13. Insurance and guarantee

In all the countries, the building act comprises some instructions for insurance and/or guarantees.

13.1 The situation in each country

13.1.1 Estonia

There are no requirements on compulsory insurance of the consultants and contractors, who have a registration in the state register of undertakings operating in areas of activity subject to special requirements (RETTER).

But the contractor must have a guarantee to insure that quality claims are fulfilled. For the purposes of Building Act, a guarantee is an obligation assumed by a building contractor to ensure that the work executed by the contractor complies with the conditions of the corresponding contract and that the construction works being built or any part thereof will, if used for its intended purpose and properly maintained, retain its safety, usability and high quality for a set period of time so enabling the construction works as a whole or any part thereof to be used.

The guarantee shall be granted for a period of at least two years, and the validity period starts when the building is completed by contract and/or delivered to the client.

The guarantee granted by the manufacturer of equipment incorporated in a construction works in a permanent manner in the course of construction applies to such equipment, and the duration of the guarantee granted to equipment by building contractors shall not be less than six months.

Construction faults, which become evident during the guarantee period of a construction works, shall be eliminated by the building contractor at the contractor's expense and within a reasonable period of time.

13.1.2 Latvia

Insurance of the building site is now obligatory (since 2005). Actors participating in construction activities have an obligation to insure the construction works, and the possible damages or harm to the third persons.

Now it is also obligatory to have a guarantee granted for a period of 2 years (this is a part of the standard contracts between the client and the actors).

13.1.3 Lithuania

Insurance of the building site is obligatory for contractors, and shall also cover possible losses for third persons.

The Civil Code of the Republic of Lithuania determines the duty to insure subject of construction, building materials or other building properties, which are usually used in construction process, or duty to insure civil liability for damages. The contract party, which has had the duty to insure construction subject or civil liability, should present the evidence of having the insurance policy, to present the name of Insurance Company, to indicate the sum of insurance and the main conditions of insurance.

The guarantee time on a housing project is established by the Law or by the Contract. If guarantee time is not established, the defects of construction works should be defined in a period not less than 5 years after issuing of completion certificate.

13.1.4 Poland

The Construction Law does not comprise obligations on insurance or guarantee grants.

13.2 Comparison: Insurance and guarantee

The main information on insurance and guarantee obligations according to the building legislation in the countries is put together in a tabular form.

Table 22. Insurance and guarantee obligations

	Estonia	Latvia	Lithuania	Poland
Insurance	None	Mandatory	Mandatory	None
Guarantee	Mandatory guarantees, 2 years	Mandatory guarantees, 2 years	Mandatory guarantees, 5 years	None

In Latvia and in Lithuania, both insurance and guarantee grants are mandatory, while only guarantee grants are mandatory in Estonia. In Estonia and Latvia the guarantee period is 2 years, and in Lithuania the period is 5 years.

In Poland, such obligations are not mentioned in the legislation.

References

General

In all countries, the main sources are the text of the Building Act, other legal documents, and other official information given from the ministries. In addition, information given by officers in the ministries in group interviews has been taken into the report.

Estonia

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 Information given in group interviews with public officers in the ministries.

Sammenfattning

Denne rapporten er finansiert av Nordisk Ministerråd som et prosjekt under programmet "Increased Exchange in the Building and Construction Sector in the Northern Dimension region". Målet med denne rapporten har vært å beskrive hovedprinsippene i Plan- og bygningslovgivningen i de tre baltiske land og Polen, og å sammenligne noen av de mest sentrale punktene. Lovgivningen er sett på som et komplett system i hvert land, sett i sammenheng med planhierarkiet, historisk sammenheng og andre lvoer. Denne rapporten er ikke primært "en sammenligning av kapitler".

De tre baltiske land har mange likheter i sin historie for det forrige århundre, men er forskjellig i sin tidligere historie. Dette har gitt utslag i hvordan ny bygningslovgivning ble etablert etter løsrivelsen fra Sovjetunionen. Landene hadde en felles lovgivning i nesten 50 år, men har siden 1991 vedtatt sin egen lovgivning basert på forskjellige modeller.

Polen har hatt en turbulent historie både i tidligere og i nyere tider. Deres aktuelle lovgivning er basert på tidligere lover uten de store forandringene og kan nå sies å framstå som et "lappetepe".

Byplanleggingens historie basert på demokratiske prinsipper er nokså kort. I alle land finnes det områder som ikke er omfattet av lokale planer. Men i alle land danner lokale planer den legale basisen for all byggevirk-somhet og byggetillatelsen skal baseres på overensstemmelse med disse planene. Landene har valgt forskjellige tilnærmelser til å takle situasjoner hvor godkjente planer mangler.

Når det gleder innhold og struktur i den enkelte lovgivningen, an-svarsforhold og krav til kompetanse til de forskjellige aktører og kvali-tetskrav til byggeplassen er det bare små forskjeller mellom landene. Systemet for kontroll og tilsyn derimot viser forskjeller av større betyd-ning, både når det gjelder hvilken myndighet som har ansvar og rutiner for saksbehandling. Estland og Litauen har plassert den første kontrollin-stansen hos private aktører, mens Latvia og Polen har et system basert på strengere kontrollmyndigheter.